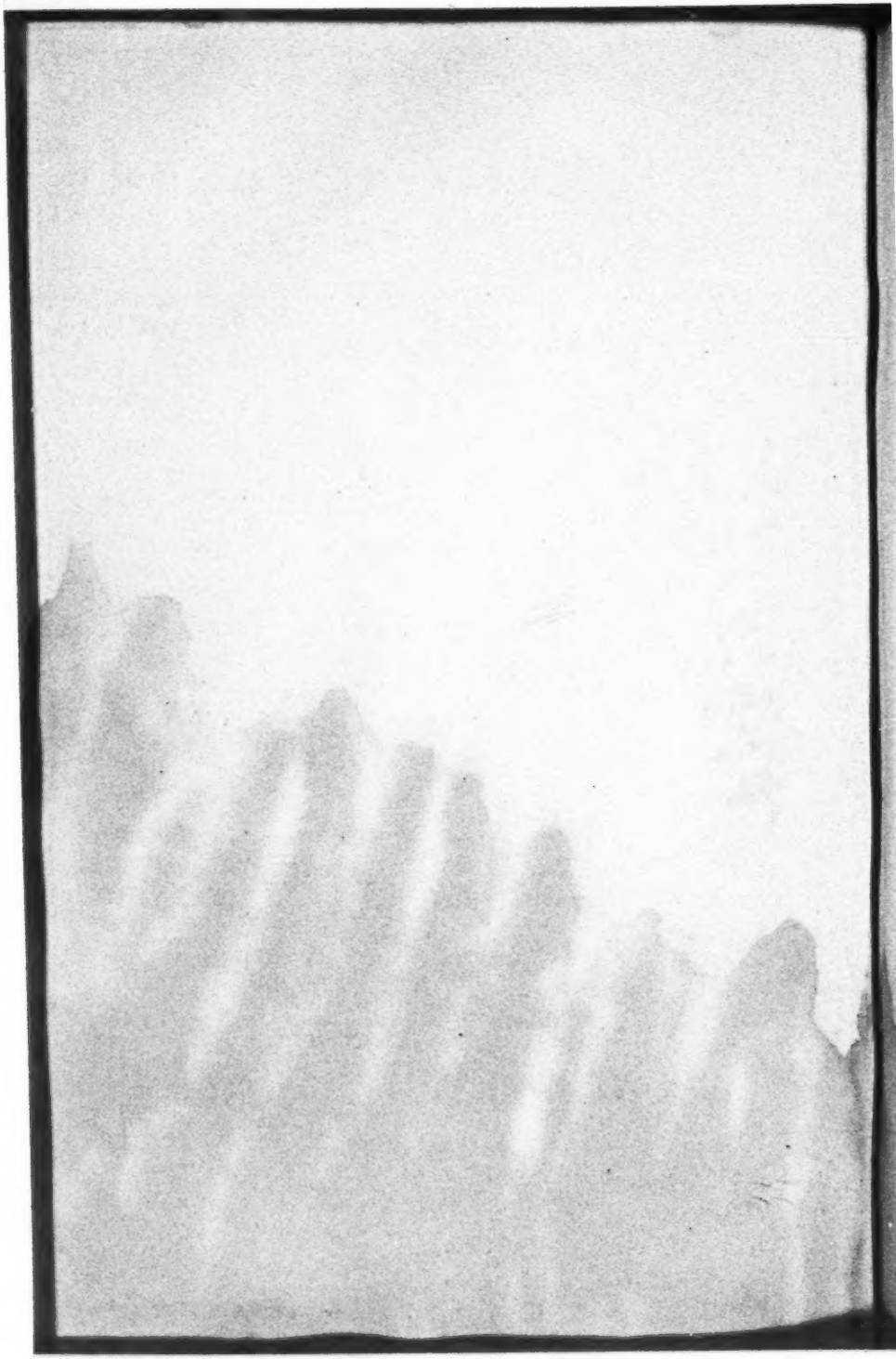

No. 27. April Sessions, 1907.

IN THE

Circuit Court of the United States

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

The United States of America, Plaintiff,

vs.

The Reading Company, The Philadelphia and Reading Railway Company, The Lehigh Valley Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Central Railroad Company of New Jersey, The Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, The Philadelphia and Reading Coal and Iron Company, The Lehigh Valley Coal Company, The Lehigh and Wilkesbarre Coal Company, The Pennsylvania Coal Company, The Hillside Coal and Iron Company, The New York, Susquehanna and Western Coal Company, and The Temple Iron Company, Corporations, *et al.*, Defendants.

DEFENDANTS' TESTIMONY.

VOLUME V.

PRESS OF
ALLEN, LANE & SCOTT,
PHILADELPHIA.

INDEX.

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY.

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
A. Zabriskie Ryerson	3	14	....	....	....
John L. Guyre	15	30	31	....	....
Marshall E. Johns	32	196	211	....	....
C. D. Simpson	214	....	....	....	....
Frank E. Smith	216	244	253	....	....
Captain W. A. May	255	346	351	356	....
Marshall E. Johns, recalled	357	360	362	....	....

TEMPLE IRON COMPANY.

Statements concerning Temple Iron Company 455–465

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
Henry W. Kingsbury	366	369	378	381	....
Robert Van Arsdale Norris	386	438	....	....	....
Hon. W. L. Connell	439	451	....	....	....
George E. Stevenson	465	507	510	....	....
George L. Houser	511	513	....	....	....
Frank H. Hemelwright	514	519	....	....	....

READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY AND THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement concerning Reading Companies 521–542

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
Charles E. Henderson	542	588	607	....	....
W. G. Brown, recalled	608	619	624	....	....
Agnew Thompson Dice	625	648	653	....	....
George Ziegler	655	661	667	....	....
John F. Auch	667	674	....	....	....
William J. Richards	682	704	708	....	....
Theodore Voorhees	710	716	718	....	....
George F. Baer	1160	1200	1223	....	....

LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY COAL COMPANY AND ALLIED INTERESTS.

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
David G. Baird	719	766	779	783	785
Charles E. Forsdick	786	....	....	....	....
George N. Wilson	790	791	794	795	....
William T. Grier	795	806	819	823	825
William J. Wilgus	826	830	....	....	....
Edward J. Snook	832	833	834	....	....
J. I. Morrison	834	842	845	847	....
Richard A. Van Houten	847	854	....	....	....
J. I. Morrison, recalled	855	....	....	....	....
N. L. Moon	856	....	....	....	....
Charles E. Forsdick, recalled	1066	....	....	....	....
Thomas A. Lang, recalled	1070	....	....	....	....
E. B. Thomas	1074	1106	1126	1130	....

ERIE RAILROAD COMPANY.

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
Edgar Gartley	864	876	881	....	....
William D. Russell	888	900	....	....	....
W. W. Ruley	982	988	1001	1007	....
David Bosman	1014	....	....	....	....
Martin P. Blauvelt	1025	1033	1036	1038	....
Martin Quick	1042	1043	....	....	....
John B. Kerr	1043	1056	1063	....	....
David Bosman, recalled	1156	1157	1159	....	....

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Statements concerning D. L. & W. R. R. 930–939

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
Reese A. Phillips	902	918	929	....	....
William H. Truesdale	1133	1141	1150	1154	1155

PHILADELPHIA AND READING COAL AND IRON COMPANY AND ERIE RAILROAD COMPANY.

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
George E. Kirkpatrick	940	951	953	....	....
Heber S. Thompson	955	972	977	....	....

MERCANTILE TRUST COMPANY, TRUSTEE OF THE MORTGAGE OF THE ERIE RAILROAD COMPANY.

	Direct.	Cross.	Re-Direct.	Re-Cross.	Re-Re-Direct.
Isaac Michaels	1009	1012	....	....	....

ROBERTSON & LAW.

	Direct.				
John M. Robertson	1225	....	....	....	....

DEFENDANTS' REBUTTAL.

Extracts from Annual Reports of the Philadelphia and Reading Railroad Company 1226–1228
Extracts from Annual Reports of the Erie R. R. Co. 1229–1230

Met pursuant to notice Wednesday May 12th, 1909, 10.30 A. M., at the Astor House, New York City.

Present:—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government, J. F. Schaperkotter, Esq., representing Lehigh Valley Railroad Company. Frank H. Platt, Esq., and George W. Field, Esq., representing Lehigh Valley Railroad Company and Lehigh Valley Coal Company. Hon. Adelbert Moot, representing Hillside Coal and Iron Company; Erie Railroad Company, New York, Susquehanna and Western Railroad Company; Pennsylvania Coal Company, New York Susquehanna and Western Coal Company; and Clarence Coal Company.

TESTIMONY ON BEHALF OF LEHIGH VALLEY RAILROAD COMPANY, LEHIGH VALLEY COAL COMPANY, AND ALLIED INTERESTS.

DAVID G. BAIRD, having been duly sworn, was examined as follows:—

By MR. PLATT:

Q. Are you the secretary of the Lehigh Valley Railroad Company? A. I am.

Q. Are you also the secretary of the various railroad corporations which make up the Lehigh Valley Railroad system? A. I am.

Q. State briefly the history of your connection with the Lehigh Valley, commencing at the time when you entered its service. A. I entered the service of the Lehigh Valley in 1873, in the early part of the year, as a bookkeeper of one of the subsidiary companies, and was successively general bookkeeper ——

Q. General bookkeeper of the Lehigh Valley Railroad Company? A. Of the Lehigh Valley Railroad Company; also assistant cashier, general assistant, assistant secretary and secretary of the company.

Q. Always in the executive offices of the company at Philadelphia? A. Always.

Q. You are familiar with the history of the company? A. I am.

(Mr. Platt offered in evidence three documents: The first being entitled, "A Diagram showing the position of and constituent companies merged into the Lehigh Valley Railroad Company (Pennsylvania)." Marked Lehigh Valley Exhibit No. 1, May 12th, 1909.

Second, "Diagram showing the position of the constituent companies merged into the Lehigh Valley Railroad Company of New Jersey." Marked Lehigh Valley Exhibit No. 2, May 12th, 1909.

Third, "Diagram showing position of and constitutent companies merged into the Lehigh Valley Railway Company (New York)." Marked Lehigh Valley Exhibit No. 3, May 12th, 1909.

By MR. PLATT:

Q. When was the Lehigh Valley Railroad Company organized? A. It was organized under an Act of the State of Pennsylvania incorporating the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company, which was passed April 21st, 1846.

Q. The name was afterwards changed in 1853, by Act of the Legislature, to "Lehigh Valley Railroad Company?" A. That is correct.

Q. When was construction commenced? A. Not until 1852—1852 or 1853; that is, active construction.

Q. When was the road first put into operation? A. In the Fall of 1855.

Q. Between what points? A. Between Easton, Pennsylvania, and Mauch Chunk, Pennsylvania.

Q. Following the line of the Lehigh River? A. Following the line of the Lehigh River.

Q. What was that distance? A. I think it was about between forty-five and forty-six miles.

Q. What were its connections at its western terminal? A. The Beaver Meadow Railroad.

Q. Which ran from Mauch Chunk up into what is now known as the Middle Coal Field? A. To the coal mines at Beaver Meadow.

Q. What were the eastern connections at Easton? A. The Central Railroad of New Jersey; the Belvidere, Delaware Railroad; the Delaware Division Canal, and the Morris Canal.

Q. The Morris and Essex Railroad? A. I think the Morris and Essex, but I am not quite sure as to the date at which that railroad was opened.

Q. What was the business of the railroad? A. That of carrying coal.

Q. Anthracite coal? A. Anthracite coal.

Q. At that time confined almost entirely to the carriage of anthracite coal from what is known as the Middle Coal Field? A. From the Middle Coal Field.

Q. Did the railroad company at that time engage at all in the carrying of freight, outside of coal? A. It did not.

Q. It was strictly a coal railroad? A. Strictly a coal railroad.

Q. Bringing out the product that was brought to it by the Beaver Meadow road and by the Hazleton road? A. That is right.

Q. How was the freight along the line taken care of, other than coal? A. That was a contract made with Howard & Co., otherwise known as the Lehigh Valley Freight Company. They owned cars and operated their freight traffic on the road.

Q. Operated it themselves? A. Operated it themselves.

Q. To what time did that continue? A. I think it was about 1870.

Q. Down to the time when the road was completed and in full operation, about 1857, what had been the cost of the road and equipment? A. It was approximately three million dollars.

Q. What was its capital stock outstanding and bonds? A. The capital stock outstanding at that time was $1,-

781,100; and bonds outstanding to the amount of a million and a half.

Q. Previous to the building of the Lehigh Valley road, how had this coal that it handled been brought out of the region? A. By the Lehigh Canal, owned by the Lehigh Coal and Navigation Company.

Q. That was a canal, or a slack water enterprise, on the Lehigh River, running down from White Haven to Easton? A. White Haven to Easton was its line.

Q. Easton being at the junction of the Lehigh and Delaware Rivers? A. That is right.

Q. How long was the operation of the road from Easton to Mauch Chunk continued before any extensions of the system were effected? A. Until 1864.

Q. What took place then? A. The merger of the Beaver Meadow Coal and Railroad Company into the Lehigh Valley.

Q. Was not the Penn Haven and White Haven Railroad also merged into the Lehigh Valley at about the same time? A. About the same time.

Q. Describe what the Penn Haven and White Haven Railroad was? A. It was a railroad, chartered by the State of Pennsylvania, to build a railroad from Penn Haven to White Haven, a distance of about seventeen miles.

Q. What was the Beaver Meadow Railroad? A. The Beaver Meadow Railroad was a railroad built by the Beaver Meadow Coal and Railroad Company from its mines at Beaver Meadow, down to Penn Haven and thence to Mauch Chunk and, for a part of the period, had extended about six miles below Mauch Chunk to a place called Parryville.

Q. At the time of the merger in 1864, as I understand it, that part of the Beaver Meadow which lay below Mauch Chunk had been washed away and abandoned, had it not? A. It was washed out in a flood, I think, in 1841, and never rebuilt.

Q. So that at the time of the merger, the Beaver

Meadow road extended from a connection with the Lehigh Valley at Mauch Chunk through Penn Haven to Audenried? A. That is right.

Q. What was that distance? A. About twenty-five miles.

Q. And the Penn Haven and White Haven extended from a junction with the Beaver Meadow at Penn Haven to White Haven, further up the Lehigh River towards Wilkes-Barre? A. That is right.

Q. That distance was what? A. Seventeen miles.

Q. When was the Beaver Meadow Company chartered? A. 1830.

Q. It had operated its own railroad from the time it was constructed, shortly after that, down to the time of its merger with the Lehigh Valley in 1864? A. It had.

Q. Its business was exclusively that of a coal carrying road? A. Exclusively.

Q. By its charter, it was authorized to mine and sell coal? A. It was.

Q. Did the Beaver Meadow own coal lands which came over to the Lehigh Valley Railroad with its merger? A. It did.

Q. Do you know to what extent? A. Between a thousand and eleven hundred acres.

Q. Those were the first coal lands that were ever owned by the Lehigh Valley, or any companies that it had an interest in? A. Yes, sir.

Q. By the way, the Lehigh Valley afterwards parted with that coal land? A. It did.

Q. What were the terms of the merger, as to exchange of shares? A. The shares of the Beaver Meadow Company were exchanged for shares of the Lehigh Valley Railroad, share for share.

Q. What at that time was the capital stock and bonded indebtedness of the Beaver Meadow road? A. The capital stock of the Beaver Meadow at that time was $1,983,900.

Q. Common? A. Divided into $1,860,250 common and $123,650 preferred.

Q. Had it any bonded indebtedness? A. It had none.

Q. As I understand you, that capital stock, both common and preferred, was taken up and cancelled, and Lehigh Valley Common and preferred stock issued in place of it, share for share, to the old shareholders of the Beaver Meadow Road? A. That is right, yes, sir.

Q. The Lehigh Valley Railroad has to-day outstanding a small amount of preferred stock, about $106,000? A. About $106,000.

Q. Is that the way that the existing preferred stock of the Lehigh Railroad comes to be outstanding? A. It is.

Q. The Penn Haven and White Haven Railroad; how had that been constructed? I am speaking of it now up to the time of the merger in 1864? A. It was constructed by the Lehigh Valley Railroad.

Q. You say that the Lehigh Valley Railroad had constructed it; what do you mean by that? A. I mean it had furnished all the money for the construction of the road.

Q. What was the consideration to the Lehigh Valley Railroad for that? A. The capital stock of the Penn Haven road.

Q. In other words, as I understand it, the Lehigh Valley Railroad had furnished the money which went into the construction of the Penn Haven and White Haven road, from Penn Haven to White Haven, and in return the Penn Haven and White Haven Railroad Company had issued to the Lehigh Valley Railroad Company its stock, dollar for dollar, for the amount that had been so furnished; is that right? A. Yes, sir.

Q. At the time of the merger, what amount had gone into the construction furnished by the Lehigh Valley Railroad? A. $715,033.45.

Q. At the time of the merger, what capital stock had been issued to the Lehigh Valley Railroad? A. $700,000.

Q. In the merger, the Lehigh Valley Railroad common stock was issued in exchange for that? A. Yes, sir.

Q. Was the railroad afterwards extended from White Haven to Wilkes-Barre? A. It was.

Q. Was there a special Act of the Legislature authorizing that? A. There was.

Q. What was the substance of that? A. A supplement to the charter of the Lehigh Valley Railroad Company, which continued the powers theretofore granted to the Penn Haven road.

Q. And authorized the Lehigh Valley Railroad to build the Penn Haven on into Wilkes-Barre? A. On into Wilkes-Barre.

Q. Was that done? A. It was.

Q. When? A. In 1867.

Q. What was the cost of that construction? A. $1,842,643.49.

Q. Was that built by the Lehigh Valley Railroad Company? A. It was.

Q. At its own cost? A. At its own cost.

Q. At that time the Lehigh Valley Railroad consisted of a line from Easton into the Middle Coal Field as far as Audenried, and into the Wyoming Region as far as Wilkes-Barre? A. Yes.

Q. Consisting of the roads that you have mentioned as having been constructed and absorbed up to that date? A. Yes, sir.

Q. Had the Lehigh and Mahanoy Railroad Company also been merged into the Lehigh Valley at that time? A. The Lehigh Valley and Mahanoy was merged into the Lehigh Valley in 1866.

Q. What was the basis of that consolidation? A. Forty-two thousand nine hundred and seventeen shares of the stock of the Lehigh and Mahanoy outstanding were canceled and the same amount of Lehigh Valley stock was issued, share for share.

Q. Those were fifty-dollar shares? A. Fifty-dollar shares.

Q. What amount did that add to the outstanding capital, par value, of the Lehigh Valley Railroad? A. $2,145,850.

Q. What had been the history of the Lehigh and Ma-

hanoy up to that time? A. The Lehigh and Mahanoy Railroad Company was the result of a reorganization, under foreclosure proceedings, in 1862, of the Quakake Railroad, that Road having been organized in 1857.

Q. That railroad, at the time of its merger into the Lehigh Valley, extended from Black Creek Junction, on the Beaver Meadow Road, through the Quakake Valley westward to Mount Carmel, did it not? A. That is right.

Q. And there to a junction with the Catawissa Railroad? A. To a junction with the Northern Central Railroad.

Q. What was the length of that line? A. Forty-miles.

Q. The Lehigh and Mahanoy was wholly a coal road lying in the Middle Coal Field? A. Yes, sir.

Q. What was the next extension of the system? A. The acquisition of the Hazleton Railroad.

Q. What was the Hazleton Railroad? A. It was originally incorporated in 1836, as the Hazleton Coal Company, and its name was changed in 1865 to Hazleton Railroad Company and it owned a line of railroad from the top of the mountain at Penn Haven ——

Q. Is that Hazle Creek Junction on the Beaver Meadow Road? A. Yes, sir.

Q. To? A. To the mines at Hazleton; and then also a line from Hazle Creek Junction down to the top of the mountain to the planes at Penn Haven.

Q. That latter part, from Hazle Creek Junction to Penn Haven, was subsequently abandoned? A. It was.

Q. That was one of the old inclined plane roads, was it not? A. It was reached from Penn Haven by an inclined plane to the line of the road at the top of the mountain.

Q. So that the part of the road which still continues in existence is that part between Hazle Creek Junction, on the Beaver Meadow, up to and about Hazleton? A. To Hazleton and vicinity.

Q. How long a line was that? A. The entire line of the Hazleton Railroad at the time of the merger was about thirty or thirty-one miles. That included the line

from Penn Haven. That mileage, however, included also the acquisition the same year of the Lehigh and Luzerne Railroad. Those two railroads practically operated as one, being merged about the same time.

Q. But the Lehigh and Luzerne merger was a separate merger? A. It was a separate merger.

Q. Let us confine our testimony at this point to the Hazleton Road for a moment. On what terms was that merger made? A. The issue by the Lehigh Valley of its stock, share for share, for the Hazleton stock outstanding.

Q. In other words, the outstanding stock of the Lehigh and Luzerne Railroad was $1,615,000; that was canceled and in place of it was issued the same amount of Lehigh Valley Railroad Company stock? A. I am not sure as to that figure. It was there or thereabouts. I have two memoranda here and I am not sure which is right.

Q. The Hazleton Company had also power to own coal lands and mine and sell coal, besides constructing a railroad? A. Yes, sir.

Q. Did it own lands at the time of the merger? A. It did.

Q. And those passed over to the Lehigh Valley Railroad in the merger? A. They did.

Q. And were afterwards disposed of by the Lehigh Valley Railroad? A. Yes, sir.

Q. The Lehigh Valley Railroad Company owns no coal lands, does it? A. No, sir.

Q. The Lehigh Luzerne Railroad; that also merged with the Lehigh Valley in 1868? A. It did.

Q. Where was that road located? A. From a junction with the Hazleton Road at Lumber Yard, north and west through a tunnel under Council Ridge, to the head waters of the Black Creek; and a number of branches and tributaries to collieries.

Q. What was its main terminus to the north? Drifton and Lattimer? A. It had several branches, that is, the northern end; it was Drifton or Lattimer, or Jeddo, or Eckley—all reached by various small branches.

Q. In other words, it was a mere collecting Railroad? A. It was a gathering Road.

Q. For anthracite coal? A. For the products of the mines in that vicinity.

Q. How many miles long was it? A. I have not the exact mileage of that.

Q. When had it been built? A. Prior to 1857.

Q. What was the outstanding capital stock of the Lehigh and Luzerne? A. $415,250.

Q. That was cancelled and Lehigh Valley Railroad Company stock issued in its place? A. Yes, sir.

Q. Just go back to the Hazleton Railroad a minute; what was the outstanding stock of the Hazleton Railroad at the time of the merger? A. $1,615,000.

Q. And that was cancelled and Lehigh Valley Railroad Company stock to the same amount issued for it? A. Yes, sir.

Q. At the times of these mergers, neither the Lehigh and Mahanoy nor the Lehigh and Luzerne had any outstanding indebtedness, had they? A. No.

Q. What bonded debt had the Hazleton? A. The Hazelton Railroad Company had a bonded debt of $150,000.

Q. Which was assumed by the consolidated corporation? A. Yes, sir.

Q. So that, after these mergers and transactions, which you have mentioned, the Lehigh Valley Railroad extended from Easton generally into the Middle Coal Field, covering nearly all of it, by these various roads in that region, and also extended to Wilkes-Barre? A. Yes, sir.

Q. In the Wyoming Field? A. In the Wyoming Region.

Q. Will you describe the construction of the extension of the system from Wilkes-Barre north up the valley of the Susquehanna River to the New York State line at Waverly? A. In 1866 the Lehigh Valley Railroad Company acquired a majority of the capital stock of what was called the North Branch Canal Company. That company owned a canal from Wilkes-Barre to the New York State line near Waverly.

The North Branch Canal Company purchased the canal from the Sunbury and Erie Railroad Company, who in turn had purchased it from the State of Pennsylvania. The name of the company was changed to Pennsylvania and New York Canal and Railroad Company by legislative enactment which also gave the right to build a railroad on either bank of the canal. The part of the canal which came to the Pennsylvania, New York Canal and Railroad Company was the line from Wilkes-Barre to the New York State line.

Q. The part lying down to the river to the south had been disposed of? A. That had been disposed of to another company.

Q. That gave a right of way for the line that I have mentioned? A. Yes, sir.

Q. I understand the Pennsylvania and New York Canal and Railroad Company had authority to build a line of railroad on that right of way? A. Yes, sir.

Q. Was it built? A. It was.

Q. Beginning and ending when? A. Beginning in 1866 and completed in 1869.

Q. You stated that the Lehigh Valley Railroad Company purchased a majority of the stock; did it afterwards acquire all of the stock? A. It acquired all of the stock.

Q. How was that right of way and construction paid for? A. The Lehigh Valley Railroad Company advanced the money.

Q. The Lehigh Valley Railroad Company advanced, out of its treasury, the money necessary for the purchase of the right of way and for the construction of the road? A. Yes, sir.

Q. And it was completed in 1869? A. Yes, sir.

Q. At what cost? A. About $7,000,000.

Q. What was the distance? A. One hundred and three miles.

Q. What did the Lehigh Valley Railroad Company receive for its advances? A. It received $3,000,000 of seven per cent. bonds and $4,000,000 of preferred stock.

Q. These bonds were guaranteed by the Lehigh Valley Railroad Company and sold in the market? A. Yes, sir.

Q. And the Lehigh Valley Railroad Company retained the stock? A. Yes, sir.

Q. So that it owns all of the stock in that company to-day? A. Yes, sir.

Q. As an investment? A. Yes sir.

Q. Is this preferred stock still outstanding, or was it afterwards converted into bonds? A. It was afterwards converted into bonds.

Q. Of the Pennsylvania and New York Canal and Railroad Company? A. Yes, sir.

Q. Which were sold, or are they still held? A. They were sold.

Q. What was the length of the line to Waverly? A. One hundred and three miles.

Q. At Waverly it connected with the Erie Railroad ? A. Yes, sir.

Q. Which gave an outlet for this coal to the Lakes and to points in New York? A. Yes, sir.

Q. Was it operated for a time in connection with the Erie Railroad? Was there some arrangement between the companies by which the coal passed over the Erie Railroad? A. Yes, sir.

Q. What was that arrangement? A. The Erie Railroad at that time was a six-foot gauge railroad, and a third rail was laid on the Erie Railroad from Waverly to Buffalo to accommodate the cars and engines of the Lehigh Valley.

Q. That third rail was laid at the cost of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And the Lehigh Valley Railroad Company paid the Erie trackage for the use of its railroad between the connection at Waverly and Buffalo, and wherever it used the Erie Railroad? A. Yes, sir.

Q. Was the Pennsylvania and New York Canal and Railroad operated as a separate railroad? A. Yes, sir.

Q. For how long? A. To the 1st of December, 1888.

Q. Then what was done? A. It was leased to the Lehigh Valley Railroad Company.

Q. For how long? A. Ninety-nine years.

Q. And since that time it has been operated as a part of the Lehigh Valley Railroad? A. Yes, sir.

Q. The Lehigh Valley Railroad owning all of the stock and having practically a perpetual lease? A. Yes, sir.

Q. Will you state briefly what the terms of that lease are? A. The Lehigh Valley Railroad pays all fixed charges, interest charges, taxes, and fulfils all obligations under any existing leases or contracts that the Pennsylvania and New York Canal and Railroad Company may have had, and maintains the property.

Q. Keeps the road up to proper modern conditions all the time? A. Yes, sir.

Q. Under those circumstances, it is now operated simply as a part of the Lehigh Valley Railroad Company, and its accounts are merged with those of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Where does the West Pittston Branch run? A. It extends from Coxton, on the main line of the Pennsylvania and New York Canal and Railroad, southwesterly across the Susquehanna River to a point opposite Wilkes-Barre, the City of Wilkes-Barre.

Q. Is that a part of the Pennsylvania and New York Canal and Railroad Company? A. Yes, sir.

Q. That was built with Lehigh Valley funds in the same way that you mention? A. Yes, sir.

Q. And the same is true of the Austin Branch? A. Yes, sir.

Q. Where does that Austin Branch extend? A. It extends from a point near Pittston Junction in an easterly direction to Austin and other breakers.

Q. That also is a part of the Pennsylvania and New York Canal and Railroad? A. Yes, sir.

Q. Built by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Both those branches, the West Pittston and Austin Branches, are exclusively branches for the reaching of certain coal mines? A. Yes, sir.

Q. Each one of them reaches several operations? A. Yes, sir.

Q. What was the Loyalsock Railroad? A. It is a railroad built from the coal mines at Bernice, in Sullivan County, south and west, in a general southerly direction, to a connection with the West Pittston—no, it originally stopped at a connection with the Wilkes-Barre and Harvey's Lake Railroad.

Q. At the present time the Loyalsock and Wilkes-Barre and Harvey's Lake are merged into one corporation? A. Yes, sir.

Q. And together they extend to a connection with the Lehigh Valley at the City of Wilkes-Barre, do they not? A. With the West Pittston Branch of the Pennsylvania and New York.

Q. And there they connect with the Port Bowkley Branch of the Lehigh Valley, which takes them into the City of Wilkes-Barre to form a connection with the main line of the Lehigh Valley? A. Yes, sir.

Q. What is the length of the Loyalsock as merged? A. About fifty-seven miles.

Q. The Wilkes-Barre and Harvey's Lake Railroad, which is now a part of the Loyalsock, extended from Wilkes-Barre to Harvey's Lake? A. From a point of connection with the West Pittston Branch of the Pennsylvania and New York, to Harvey's Lake.

Q. How was that built? A. That was built by the Lehigh Valley Railroad Company.

Q. You mean by the funds of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. For which the Lehigh Valley Railroad Company took stock? A. Yes, sir.

Q. What was the amount of the advance for that purpose? A. $355,861.23.

Q. How was the Loyalsock built? A. In the same way.

Q. What was the amount which the Lehigh Valley advanced for the construction of that road? A. $472,840.09.

Q. At the time of the merger, what was the outstanding capital of the Wilkes-Barre and Harvey's Lake Railroad? A. $150,000.

Q. In addition to which it owed the Lehigh Valley the balance of $205,861.23? A. Yes, sir.

Q. What was the capital stock of the Loyal Sock? A. $300,000.

Q. The capital stock of both of those companies was held by the Lehigh Valley Railroad Company? A. It was.

Q. In addition the Loyal Sock owed the Lehigh Valley the balance of its advance, amounting to $172,840.09? A. Yes, sir.

Q. In the merger the stocks of both those roads were cancelled and an equivalent amount of stock of the merged company, namely $450,000, was issued? A. Yes, sir.

Q. And also the merged company assumed the debts of the constitutent companies? A. Yes, sir.

Q. The consolidated Loyalsock Company has never been merged into the Lehigh Valley Railroad, has it? A. No, sir.

Q. But is operated as a part of the Lehigh Valley Railroad? A. Yes, sir.

Q. The Lehigh Valley Railroad Company owning all of the stock and being the only creditor? A. Yes, sir.

Q. What is the Easton and Northern Railroad? A. That is a line of railroad from the City of Easton up the Bushkill Creek, as originally constructed. It afterwards constructed a connection with the Lehigh Valley Railroad from a junction with its original line at Thirteenth Street, Easton, southward across the Lehigh River to a connection with the Lehigh Valley Railroad at South Easton.

Q. When was it built? A. In 1890.

Q. How long is it? A. Eight miles; that is, the original line.

Q. Did the Lehigh Valley Railroad Company furnish the money to build it? A. Yes, sir.

Q. What amount? A. $865,000.

Q. What was the consideration that the Lehigh Valley Railroad Company received for it? A. Stock and bonds of the Easton and Northern.

Q. How much? A. $565,000 of stock and $300,000 of bonds.

Q. Does the Lehigh Valley Railroad Company still own that stock? A. It does.

Q. How about the bonds? A. It does not own all the bonds.

Q. It has sold some? A. It has sold some of them.

Q. What is the Schuylkill and Lehigh Valley Railroad? A. It extends from Lizard Creek Junction, on the main line of the Lehigh Valley Railroad, westward a distance of about forty miles to Blackwood, in Schuylkill County.

Q. That is the line by which the Lehigh Valley Railroad reaches the mines in the Southern Coal Field? A. Yes, sir.

Q. Or the Schuylkill region, as it is called? A. Yes, sir.

Q. That was built also by money furnished by the Lehigh Valley Railroad Company? A. It was.

Q. Built when? A. 1890.

Q. It connects with the main line at Lizard Creek Junction? A. Yes, sir.

Q. How long? A. Forty miles.

Q. The Lehigh Valley Railroad Company took for its advances stock and bonds? A. Yes, sir.

Q. The same as in the other cases? A. Yes, sir.

Q. What is the amount of stock and the amount of bonds outstanding? A. $2,000,000 in stock and $2,000,000 in bonds.

Q. The Lehigh Valley Railroad Company owns all of this stock? A. No, not all.

Q. How much of it? A. I think there are five shares outstanding.

Q. Fifty-dollar shares or one hundred-dollar shares? A. Fifty-dollar shares.

Q. The bonds; are they held by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. What is the Montrose? A. A line of railroad extending from Tunkhannock, on the main line of the Pennsylvania and New York Canal and Railroad Company, a distance of about twenty-eight miles to Montrose, in Susquehanna County, Pennsylvania.

Q. That is another road which has never been consolidated? A. No, sir; it has not.

Q. It is a separate railroad corporation? A. Yes, sir.

Q. When was it constructed? A. About 1873.

Q. Constructed by the Lehigh Valley Railroad Company? A. No. It was constructed by the company itself, on money furnished by the capital stock, of which the Lehigh Valley Railroad Company owned a majority at that time.

Q. It has been reorganized? A. Yes, sir.

Q. When? A. 1905, I think.

Q. In other words, there was a foreclosure and it was bought in in the interest of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. The Lehigh Valley had advanced money prior to the reorganization? A. Yes, sir.

Q. On the reorganization was it bought in by or for the Lehigh Valley Railroad? A. Yes, sir.

Q. Do you remember what the purchase price was? A. I do not.

Q. What is its outstanding capital and bonded debt at the present time? A. $100,000 stock and $100,000 bonds.

Q. Who owns the stock? A. The Lehigh Valley Railroad Company.

Q. All of it? A. Yes, sir.

Q. And the bonds? A. The same.

Q. All owned by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. The Delaware, Susquehanna and Schuylkill Railroad; what is that? A. That is a railroad entirely within the Lehigh coal district, and is a gathering railroad.

Q. What are its terminal points? A. Stockton Junction, or Lumber Yard, on the eastern end, where it forms a connection with the Lehigh Valley Railroad, and goes

westward to Drifton, Eckley and Lattimer on the north, to Oneida on the west, and also Tomhicken.

Q. It reaches a large number of coal mines? A. It does.

Q. What is its mileage? A. I have not the mileage here.

Q. It is a separate corporation that has never been consolidated with the Lehigh Valley Railroad? A. It is a separate corporation and has never been consolidated.

Q. What is its capital stock and outstanding bonded indebtedness? A. Capital stock, a million and a half; it has no bonded indebtedness.

Q. Is the capital stock all owned by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. When was it acquired? A. In 1905.

Q. From whom was it acquired? A. From the Coxe Estate.

Q. Please state what that transaction was, briefly? A. Under an agreement with the Coxe Estate, November 1st, 1905, thirty thousand shares of the Delaware, Susquehanna and Schuylkill Railroad Company, of a par value of a million and a half, together with fifty-eight thousand two hundred and three shares of a par value of $2,910,150, of the stock of Coxe Brothers & Co., Incorporated, as also $60,000 of stock of various water companies, were purchased by the Lehigh Valley Railroad Company for some nineteen million dollars.

Q. This brought to the Lehigh Valley the entire title to the railroad and property of the Delaware, Susquehanna and Schuylkill road? A. Yes, sir.

Q. And at the same time it brought the Lehigh Valley Railroad Company the capital stock of Coxe Brothers & Co., Incorporated? A. Yes, sir.

Q. Which was the owner of coal mines, collieries, and coal operations in that region? A. Yes, sir.

Q. Also it brought the capital stock of four water companies which were necessary to the operation of the railroad? A. Yes, sir.

Q. The Lehigh Valley still owns these securities, does it not? A. Yes, sir.

Q. Which were deposited under a collateral trust mortgage? A. Yes, sir.

Q. In the Girard Trust Company in Philadelphia? A. Yes, sir.

Q. On which mortgage the Lehigh Valley raised money for the purpose of making the purchase? A. Yes, sir.

Q. Those four water companies are which? What are the names of those water companies? A. Drifton Water Company; Oneida Water Company; Beaver Meadow Water Company; Tomhicken Water Company.

Q. I will ask you again to look at the annual report and state the mileage of the railroad? A. The mileage of the Delaware, Susquehanna and Schuylkill Railroad is fifty miles and four one-hundredths of a mile.

Q. Do you know what is the annual output of coal tributary to the Lehigh Valley system from the Delaware, Susquehanna and Schuylkill road? A. I do not.

Q. You do not know that approximately? A. I do not.

Q. Has the Delaware, Susquehanna and Schuylkill been leased to the Lehigh Valley? A. No, sir.

Q. How it is now operated? A. By ownership.

Q. What is the Penn Haven Junction and Glen Onoko Railroad Company? A. The company was chartered to build a railroad from Glen Onoko to Penn Haven Junction, but the road is not yet built.

Q. There is a right of way obtained? A. I think so.

Q. What has been expended on that operation? A. Six thousand dollars.

Q. That has been expended by the Lehigh Valley Railroad Company? A. By the Lehigh Valley Railroad Company.

Q. What is the capital stock outstanding? A. Six thousand dollars.

Q. Which has been taken over by the Lehigh Valley

Railroad Company and is now owned by it in consideration of its advances? A. Yes, sir.

Q. What is the Mountain Cut-off? A. The Mountain Cut-off is a line branching off from the main line at or near Fairview, at the top of the mountain, westward to a junction with what is known as the Pleasant Valley branch of the Pennsylvania and New York at Avoca. It was a line built to avoid the steeper grades on the old line, which runs via Wilkes-Barre.

Q. In other words, the grades on the old line, coming down the mountain from Fairview into Wilkes-Barre are ninety-six feet to the mile? A. That is the maximum grade.

Q. Whereas the maximum grade on the Mountain Cut-off is sixty-four feet to the mile? A. I think that is right.

Q. Was the Mountain Cut-off built as a separate corporation? A. No, sir.

Q. It is built as a branch of the Lehigh Valley Railroad and owned by it? A. Yes, sir.

Q. What was the cost of that construction? A. $947,427.37; that is as of 1888.

Q. That was single track, was it not? A. Part of it is double track, built as a double track railroad.

Q. That was the cost up to the time that the connections were made? A. Yes, sir.

Q. You have not the figures as to cost since that time? A. I have not.

Q. Has there ever been any issue of stock against that construction? A. No, sir.

Q. It was simply built out of the cash in the treasury of the Lehigh Valley Railroad Company at that cost? A. Yes, sir.

Q. What is its length? A. About sixteen miles.

Q. Have I mentioned all of the lines of railroad in the State of Pennsylvania that enter into the system of the Lehigh Valley Railroad Company, except mine branches and short branches of that kind? A. You have with, I think, one exception.

Q. What is that? A. That is the leased line of the State Line and Sullivan.

Q. But that is a line simply operated separately, under that lease? A. That is under a lease, yes, sir; that is not part of the property.

Q. It is not part of the Lehigh Valley Railroad system? A. It is a part of the operating system, but not part of its property.

Q. These mine branches and short branches for the purpose of accommodating the coal traffic, and the assembling yards of the railroad at Coxton, Port Bowkley, and in the Wyoming Region, and at Lumber Yard, or Stockton, and Delano and one or two other places in the Middle Coal Field, and the assembling yard at Packerton—all of them have been built and are owned by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. At its own cost? A. Yes, sir.

Q. And, as against those constructions, there have been no special, separate issues of stock? A. No, sir.

Q. Now, let us take up the lines in New Jersey. What was the first that was done towards getting an independent outlet for the Lehigh Valley Railroad and its traffic to tidewater? A. The acquisition of the Morris Canal.

Q. When was that? A. In 1871.

Q. What was that canal? A. A line of canal extending from Phillipsburg on the Delaware River, through the northern end of the State of New Jersey to tidewater at Jersey City.

Q. A distance of about how much? A. About one hundred and six miles, I think.

Q. Phillipsburg is at the terminus of the old Lehigh Valley Railroad of Pennsylvania? A. Yes, sir.

Q. On the Delaware River? A. Yes, sir.

Q. Was the Morris Canal owned by a corporation? A. It was.

Q. Named what? A. The Morris Canal and Banking Company.

Q. What arrangement was made between that corporation and the Lehigh Valley Railroad in 1871? A. They

concluded a perpetual lease of all the property of the Morris Canal and Banking Company.

Q. Upon what terms? A. The Lehigh Valley assumed the payment of the indebtedness of the Morris Canal and Banking Company, and dividends on its preferred stock of ten per cent., and on this consolidated stock of four per cent.; and other payments that were stipulated.

Q. Including a payment of $25,000 every year to the State of New Jersey? A. Yes, sir.

Q. You say other payments; was not that all? A. That was all.

Q. Outside of the payment of the interest on dividends? A. Yes, sir.

Q. What was the outstanding indebtedness and the capital stock at that time, and what is it at the present time? A. The preferred capital stock is $1,175,000; the consolidated stock is $1,025,000. The bonded indebtedness at the present time is $500,000.

Q. It has been decreased since that lease? A. Yes, sir.

Q. You mean that some of it fell due and was paid off? A. Paid off.

Q. By the Lehigh Valley Railroad Company? A. By the Lehigh Valley Railroad Company.

Q. Does the Lehigh Valley Railroad Company own some of the stock and bonds of the Morris Canal and Banking Company? A. Yes, sir.

Q. Can you give the amounts? A. The Lehigh Valley Railroad Company owns three thousand one hundred and eighty-three shares of consolidated stock of a par value of $318,300. It owns two thousand seven hundred and fourteen shares of preferred stock, of a par value of $271,400. It also owns scrip of a par value of $47,000.

Q. That scrip being fractional shares? A. No, sir.

Q. What is it? A. It is a dividend scrip created by the Morris Canal and Banking Company, prior to the lease of the Lehigh Valley Railroad Company, which, of course, it assumed.

Q. Is that all of that scrip that there is outstanding? A. No, sir; there is $237.50 outstanding in an individual name.

Q. What does the Lehigh Valley Railroad Company own of the bonded indebtedness of the Morris Canal and Banking Company? A. It owns the entire bonded indebtedness of the Morris Canal and Banking Company.

Q. $500,000? A. $500,000.

Q. These securities have been purchased by the Lehigh Valley Railroad for cash? A. Yes, sir.

Q. From time to time? A. Yes, sir.

Q. The Morris Canal is still in operation? A. Yes, sir.

Q. For a time it was the Lehigh Valley Railroad's principal outlet to tide? A. Yes, sir.

Q. When did the Lehigh Valley Railroad commence to build a railroad to tide? A. In 1875. It began before and completed a railroad in 1875.

Q. What was the name of that railroad? A. Easton and Amboy Railroad.

Q. State how the Easton and Amboy Railroad was organized. A. It was organized by a purchase of the charter, in 1872, of the Bound Brook and Easton Railroad, which was chartered to build a road from Easton to Bound Brook; and the charter also of the Perth Amboy and Bound Brook Railroad. Those two companies were afterwards consolidated into the Easton and Amboy Railroad Company, which gave the right to build a line from Phillipsburg to Perth Amboy.

Q. That line was built from a connection with the Lehigh Valley Railroad to Perth Amboy and now constitutes the Lehigh Valley's main line to tide? A. Yes, sir.

Q. Tell how that railroad was financed. A. The cash was advanced by the Lehigh Valley Railroad Company.

Q. All of the cash for the construction? A. All of it.

Q. And for its equipment? A. Yes, sir.

Q. And it was completed in that way? A. Yes, sir.

Q. For that the Lehigh Valley Railroad received what? A. Stock and bonds of the Easton and Amboy Railroad.

Q. Dollar for dollar, for the amount that it had advanced? A. Yes, sir.

Q. What is the length of the road from Phillipsburg to Perth Amboy? A. I think sixty miles.

Q. The Lehigh Valley Railroad Company, in connection with that operation and as part of it, bought very extensive terminals for the handling of freight and coal at Perth Amboy? A. It did.

Q. And constructed large terminal yards there? A. Yes, sir; piers.

Q. And piers? A. Yes, sir.

Q. Also a stocking plant? A. Yes, sir.

Q. Of what capacity? A. That I do not know.

Q. Several hundred thousand tons? A. Yes, sir.

Q. Was the cost of that included in the cost of the Easton and Amboy Railroad? A. Yes, sir.

Q. It was not a separate operation? A. No, sir.

Q. That has been operated ever since its construction as a part of the Lehigh Valley system? A. Yes, sir.

Q. And solely for the purpose of getting its traffic to tide? A. Yes, sir.

Q. It was not originally built to Jersey City at all? A. No, sir.

Q. That original stock was all taken over by the Lehigh Valley Railroad and held by it, was it not? A. Yes, sir.

Q. The bonds however, were sold? A. Sold.

Q. And are outstanding now? A. Yes, sir.

Q. And in the hands of the general public? A. Yes, sir.

Q. Some of those bonds have been refunded, have they not? A. The Easton and Amboy? No, sir.

Q. They are outstanding? A. They are outstanding, in the hands of the public.

Q. Since the construction of the Easton and Amboy, has the Lehigh Valley constructed a system of road connecting that road from a junction at South Plainfield with its New York harbor system at Jersey City? A. Yes, sir.

Q. Taking that up now as is was constructed, what was the Roselle and South Plainfield Railroad Company? A. The Roselle and South Plainfield Railroad was organized in 1885 by the Lehigh and built a line from South Plainfield to Roselle, on the Central Railroad of New Jersey.

Q. What year was that? A. It was incorporated in 1885.

Q. How was that financed? A. The road was built by capital advanced by the Lehigh Valley Railroad Company, who took the stock of the Roselle and South Plainfield Railroad Company.

Q. When you say advanced in these cases, you mean the cost of construction was the amount that was advanced? A. I do.

Q. As the road was built, the bills were paid through the Lehigh Valley Railroad Company offices, by advances to the subsidiary roads? A. That is right.

Q. And the subsidiary roads from time to time issued to the Lehigh Valley Railroad Company capital stock in amounts equal to the advances, dollar for dollar? A. Yes, sir.

Q. That is the truth as to all of these railroads that constitute this system that we are now talking about? A. It is.

Q. Except in one or two instances, which I will ask you to mention? A. In a general way, that is right.

Q. What was the Jersey City Terminal Railroad? A. The Jersey City Terminal Railway Company was organized in 1888 to build a terminal line on the property which the company had acquired to Jersey City, for a freight terminal, and it reaches from a junction with the National Docks Railway eastward to the exterior line of our piers in New York harbor.

Q. Was this financed in just the same way? A. In the same way.

Q. Where are the freight terminals in Jersey City located? A. They have a frontage on the Hudson River and south of what is called the Gap, south of the Morris Canal Gap at Jersey City, and adjoin the Central Railroad of New Jersey on the north.

Q. How extensive a terminal is that? A. It is quite extensive.

Q. What frontage on the river? A. Perhaps fifteen hundred feet. I am not quite clear as to that measurement.

Q. And extending back into Jersey City a long distances? A. To the mainland of Jersey City; about a mile or more.

Q. It is all built up with tracks and warehouses and engine houses and the various things that go to make up a large railway terminal? A. Yes, sir.

Q. It is not a passenger terminal, but is entirely a freight terminals? A. Entirely a freight terminal.

Q. Besides fronting on the river it also fronts on what you call the Gap? A. Yes, sir.

Q. Which is a navigable water with several piers extending into it? A. Yes, sir.

Q. All of which are connected with the railway system? A. Yes, sir.

Q. That is owned by the Lehigh Valley Railroad now, of New Jersey? A. The Lehigh Valley Railroad Company of New Jersey.

Q. Next the Newark Railway Company; what was that? A. That was a company organized in 1890 to build a short piece of track in the City of Newark, to reach the yards and coal pockets.

Q. Financed in the same way? A. Yes, sir.

Q. The Newark and Roselle Railway? A. The Newark and Roselle Railway Company was incorporated in 1889, to build a road from a junction with the Roselle and South Plainfield Railway, near Roselle, to a point in the City of Newark.

Q. Financed in the same way? A. Yes, sir.

Q. The Newark and Passaic Railway? A. The Newark and Passaic Railway Company was organized in 1889 to build a road within the City of Newark with its terminus on the Passaic River.

Q. Financed in the same way? A. Yes, sir.

Q. The Jersey City, Newark and Western Railway? A. The Jersey City, Newark and Western Railway was organized in 1889 to build a line from a connection with the Newark and Roselle Railway in Newark, eastward across Newark Bay to Bergen Neck to a point in the lands of the National Storage Company in Jersey City.

Q. Where are the National Storage Company and the National docks? A. The National Storage Company owns the National docks, and is a system of large storehouses built on what is known as Black Tom Island in New York bay.

Q. Connecting with the mainland by the Lehigh Valley Railroad system? A. Yes, sir.

Q. And lying a mile or so south of the Jersey City terminal? A. Yes, sir.

Q. How about the Edgewater Railway Company? A. The Edgewater Railway Company was organized in 1890 to build a road on the north side of the company's property at Jersey City, and the line follows generally the line of the Morris Canal.

Q. That was financed in the same way? A. Yes, sir.

Q. These seven railroad lines mentioned, namely, Roselle and South Plainfield, Jersey City Terminal, Newark Railway, Newark and Roselle, Newark and Passaic, Jersey City, Newark and Western and the Edgewater Railway, were all connecting railways; is that right? A. Yes, sir.

Q. Were they merged and consolidated, and when? A. They were merged on August 28th, 1891, into a new corporation called the Lehigh Valley Terminal Railway Company.

Q. Had the Lehigh Valley Terminal Railway, up to the time of the merger, constructed any separate railroad of its own? A. No, sir.

Q. Or was it simply a company organized for the purpose of taking over these seven railroads that you have mentioned? A. It had no property of its own before that date, and was incorporated for the purpose of taking in the seven companies named.

Q. You gave the date of that merger as what? A. August 28th, 1891.

Q. It appears on the chart I have in my hands as August the 7th. At any rate, it was in the month of August, 1891; is that right? A. I think August 28th, 1891, is correct.

Q. I call your attention now to another group of six railroads. First, the National Docks Railway Company. Where was that? When was it organized and what was it? A. The National Docks Railway was organized July 9th, 1879, and it built a line of railroad from a connection with the Pennsylvania Railroad's line, known as "Point-of-Rocks," and extended thence to the National Docks of the National Storage Company.

(At 1 P. M. a recess was taken until 2 o'clock P. M.)

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2 O'clock P. M.

Present:—The Examiner. Messrs McReynolds, Todd, Schaperkotter, Platt, Field, Moot.

DAVID G. BAIRD, direct examination, resumed.

By MR. PLATT:

Q. When did the Lehigh Valley Railroad first have any relation to the National Docks Railway Company? A. In 1889.

Q. That was ten years after it had been incorporated? A. Yes, sir.

Q. State what that relationship was? A. The Lehigh Valley Railroad Company owned one-half of the stock.

Q. Bought one-half of the stock? A. Bought one-half of the stock.

Q. The other half was owned by? A. By the National Storage Company.

Q. The Lehigh Valley bought into that corporation so as to have the docks and storage facilities of the National Storage Company for the use of its traffic; is that right? A. Yes, sir.

Q. What was the capital stock at that time, and what amount did the Lehigh Valley buy, and what did it pay for it? A. In 1889?

Q. When it first bought. A. The total capital stock

of the National Docks Railway was $2,400,000. The Lehigh Valley purchased one-half of it, $1,200,000, at par.

Q. Did it at that time enter into an agreement with the National Storage Company for the construction of other railroads? A. It did.

Q. What were those roads? A. Bergen Neck Railway; the Jersey City and Western Railway; the National Docks and New Jersey Junction Connecting Railway; the Kill von Kull Railway; and the Bay Creek Railway.

Q. How about the Jersey City and Western Railway Company? A. And the Jersey City and Western.

Q. What were the terms under which the capital was to be furnished for the construction of those railways? A. Each party to the agreement was to furnish one-half of the capital.

Q. And to receive $100 in stock for every $100 expended? A. Yes, sir.

Q. Was that carried out? A. Yes, sir.

Q. Those five railroads that you have last mentioned were built under that arrangement? A. Yes, sir.

Q. Where did the Bergen Neck Railway run? A. It was, as its name implies, on Bergen Neck; from Jersey City down to Bergen Point, along the shores of New York Bay.

Q. And connecting with the National Docks Railway? A. Connecting with the National Docks Railway, yes.

Q. And also with the system which had been built up at the Jersey City terminal? A. Indirectly, yes.

Q. The Jersey City and Western Railway; where was that? A. That was a company originally incorporated to build a line from a point on the property of the National Docks Railway south on Bergen Neck and across Newark Bay, to a point in the city of Newark.

Q. The National Docks and New Jersey Junction Connecting Railway; where was that? A. It was from a point on the original line of the National Docks Railway Company, northward under the yard and property of the Pennsylvania Railroad system to a point of connection with the New Jersey Junction Railway Company north of the Pennsylvania line.

Q. The Kill von Kull Railway; where was that? A. That was a small line down at Bergen Point.

Q. Bay Creek Railway Company? A. It was also a small line at Bergen Point.

Q. Were all of those last six named railways connecting railways? A. They were.

Q. Were they merged together? A. They were merged.

Q. When was that? A. The first three, namely, National Docks Railway Company, Bergen Neck Railway Company and Jersey City and Western Railway Company, were merged on August 27th, 1891, into the National Docks Railway Company, a new corporation. Subsequently, on January 24th, 1898, the National Docks and New Jersey Junction Connecting Railway Company, the Kill von Kull Railway Company, and the Bay Creek Railway Company were merged into the National Docks Railway Company.

Q. Did this new corporation, into which these companies were merged, prior to the merger build any railroad itself? A. No, sir.

Q. Or was it merely a new company into which these six railways became merged? A. It was a new company created by the merger.

Q. When the merger was completed, was the capital stock of the new National Docks Railway Company all owned by the Lehigh Valley Railroad Company, or half of it? A. One-half of it was owned by the Lehigh Valley Railroad Company.

Q. Subsequently did the Lehigh Valley Railroad Company purchase the other half? A. It did.

Q. It now owns all the stock of the National Docks Railway Company? A. Not now; it did.

Q. It did as long as there was any stock of the National Docks Railway Company? A. Yes, sir.

Q. That has since been merged into another company? A. It has.

Q. But, as long as it remained an independent company, the Lehigh Valley Railroad Company owned all of its capital stock? A. It did.

Q. As I understand it—I think you have testified to this—as to all six of these companies, it is true that they were built with capital furnished, half by the Lehigh Valley Railroad Company and half by the National Storage Company, and each of the companies issued, dollar for dollar, capital stock to the corporations that furnished the capital? A. Yes, sir.

Q. What was the date when the Lehigh Valley purchased the outstanding half of the capital stock of the National Docks Railway Company? A. October 24th, 1899.

Q. On what terms did it purchase it? A. It purchased the outstanding one half of the stock of the National Docks Railway Company, together with all of the stock of the National Storage Company. For these two items, it paid six million dollars, one million dollars of which was in cash and five million dollars in trust certificates.

Q. That is, trust certificates issued by the Lehigh Valley Railroad Company, on which it raised the money to make the payment? A. It was an obligation of the Lehigh Valley Railroad Company, and the stocks which it purchased were put up as collateral with the Trustee for the issue of these trust certificates.

Q. Subsequently those trust certificates were paid off in cash at par? A. They were.

Q. So that, in the end, the Lehigh Valley Railroad Company paid for that half of the stock of the National Docks Railway, together with all the stock of the National Storage Company, six million dollars? A. Six million dollars.

Q. The National Storage Company is what? A. Is a storage company owning large and extensive stores on what is known as Black Tom Island, in New York Bay, I presume a mile south of our present Jersey City terminal.

Q. Those now constitute the terminal storage warehouses of the Lehigh Valley Railroad Company, used in connection with its traffic? A. Yes, sir.

Q. Now I call your attention to five other pieces of railroad which are now part of the Lehigh Valley Railroad System. First, the Middlesex Railway Company. What was that? A. The Middlesex Railway Company owned a small piece of track in the city of Perth Amboy, to reach certain industrial plants there.

Q. Connecting with the Lehigh Valley Railroad? A. Connecting with the Lehigh Valley Railroad System.

Q. How was it financed? A. It was built by the Lehigh Valley Railroad Company, who took the capital stock of the Middlesex Railway Company for such advances.

Q. Dollar for dollar? A. Dollar for dollar.

Q. The Perth Amboy and Raritan Railway. A. The Perth Amboy and Raritan Railway Company owned a line of railroad branching off from the main line of the Lehigh Valley System near the city of Perth Amboy, and running westward through various clay and brick works along the Raritan River.

Q. When was it built, approximately? A. 1891 or 1892, thereabouts, I think.

Q. When was the Middlesex Railway built? A. That was built in the eighties, I think. I think about 1886 1887.

Q. Pittstown Branch Railway Company. A. The Pittstown Branch Railway Company owned a line of railroad branching off the main line of the Easton and Amboy at Lansdowne, running south three or four miles to the village of Pittstown.

Q. When was that built? A. I think in the early nineties, about.

Q. Greenville and Hudson Railway; what was it and when was it built? A. The Greenville and Hudson Railway owned a line of railroad from a point of connection on the south with the theretofore constructed Lehigh Valley System, running north by an elevated line and making a direct connection with the Lehigh Valley terminal at Jersey City.

Q. Built when? A. 1896 or 1897.

Q. Irvington Railroad. A. The Irvington Railroad Company owned a line of railroad branching off from the main line of the Lehigh Valley System near Elizabeth Station, and running north two or three miles to the town of Irvington, which is in the suburbs of the city of Newark.

Q. When built? A. 1904 or 1905.

Q. These five roads, the Middlesex, Perth Amboy and Raritan, Pittstown Branch, Greenville and Hudson, and Irvington, how were they all financed? A. They were all financed by the Lehigh Valley Railroad Company, which advanced all the money to all these roads and received in exchange stock, or stock and bonds, as the case may be.

Q. When it took these, it took them dollar for dollar, for the road's cost; is that right? A. Yes, sir.

Q. Did it take all of the stock of all of the companies? A. Yes, sir.

Q. Coming now to the present New Jersey corporation, the Lehigh Valley Railroad Company of New Jersey; please state when that was incorporated and for what purpose. A. The Lehigh Valley Railroad Company of New Jersey was incorporated July 29th, 1903, upon the merger of the Easton and Amboy Railway Company, the Greenville and Hudson Railway, the Pittstown Branch Railway Company, the Perth Amboy and Raritan Railway Company, the Middlesex Railway Company and the Lehigh Valley Terminal Railway Company.

Q. What were the terms of that merger? A. The capital stock of the Lehigh Valley Railroad Company of New Jersey was issued share for share in exchange for the stocks of the companies entering into the merger.

Q. And it assumed all of the obligations and took over over all the property of those companies? A. Yes, sir.

Q. Was there a subsequent merger of other companies into the Lehigh Valley Railroad Company of New Jersey? A. Yes, sir.

Q. What was that? A. The merger of the National Docks Railway System; that was merged into the Lehigh Valley Railroad Company of New Jersey April 7th, 1905.

Q. The terms of that merger were what? A. The terms were that the stock of the Lehigh Valley Railroad Company of New Jersey was issued share for share for that of the National Docks Railway Company.

Q. At that time had all the stock of the National Docks Railway Company been acquired by the Lehigh Valley Railroad Company? A. It had.

Q. Was there a subsequent merger? A. Yes, sir

Q. What was that? A. That of the Irvington Railroad Company, which was effected on June 29th, 1906.

Q. The terms were what? A. The stock of the Lehigh Valley Railroad Company of New Jersey was issued for the stock of the Irvington Railroad Company share for share, and the Lehigh Valley Railroad Company of New Jersey assumed the bonded indebtedness of the Irvington Railway Company.

Q. Taking all of the property and assuming all of the debts? A. Yes, sir.

Q. So that at that time, after the merger of the Irvington Railroad into the Lehigh Valley Railroad Company of New Jersey, all of the different railroads in the Lehigh Valley system in the State of New Jersey had become merged into the Lehigh Valley Railroad Company of New Jersey? A. Yes, sir.

Q. That was in 1906? A. Yes, sir.

Q. At the time of that merger in 1906, and after it and up until the present time, all of the capital stock of the Lehigh Valley Railroad Company of New Jersey belonged and belongs to the Lehigh Valley Railroad Company? A. Yes, sir. I want to correct a statement I made in answer to the previous question. There are two railroad corporations of the State of New Jersey owned by the Lehigh Valley that are not included in this merger.

Q. But the merger includes all of the corporations in New Jersey that you have mentioned in your testimony up to this point? A. Yes, sir.

Q. Is one of those that you have just spoken of the Bay Shore Connecting Railroad? A. Yes, sir; of which we only own one half of the stock.

Q. What is that railroad? A. It is a railroad about a mile long. It is on Newark Meadow, in the City of Newark and lies between the Central Railroad of New Jersey, its Newark line on the north, and the Lehigh Valley on the south.

Q. It is simply a connecting road to connect those two tracks? A. For freight traffic, yes, sir.

Q. How was that constructed and financed? A. It was financed by the Lehigh Valley Railroad Company one half and the Central Railroad of New Jersey one half.

Q. And the stock issued to these two companies half in half, dollar for dollar? A. Yes, sir.

Q. When was that built? A. It was 1905 or 1906 I think.

Q. The Jersey City Belt Line Railroad. A. That is one of those I had in mind.

Q. When was that built? A. It is not built, not altogether built. It is partially built.

Q. Where is it? A. It is within the limits of Jersey City and the City of Bayonne, and follows generally the line of the Morris Canal from the eastern end at the Hudson River, to a point in Jersey City at or near the shores of Newark Bay.

Q. How was that constructed and financed? A. The Lehigh Valley Railroad Company advanced all the money for the constructing, and the stock of the Jersey City Belt line Railway Company was issued for such advances dollar for dollar.

Q. The Newark Bay Railway Company; what is that and when built? A. The railroad of the Newark Bay Railway Company is not built. It was incorporated to build a line of railroad entirely within the City of Newark.

Q. Some money has been expended on it? A. Yes, sir.

Q. And that was furnished by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And stock issued to the Lehigh Valley Railroad Company for the amount that it furnished? A. Yes, sir; dollar for dollar.

Q. Take up now, if you please, those railroads which have made up the Lehigh Valley System in the State of New York. First take the Geneva and Van Ettenville Railway. Give briefly the organization of that railway and its acquirement by the Lehigh Valley Railroad. A. The Geneva and Van Ettenville Railway Company was incorporated in 1889, to build a line of railroad from Van Etten Junction, on the existing line of the Lehigh Valley, westward and northward along the shore of Seneca Lake to Geneva. It acquired by merger two other lines; the Auburn and Ithaca Railway and the Geneva and Sayre Railroad.

Q. Take the first of these, the Auburn and Ithaca Railway. A. The Auburn and Ithaca Railway was built by the Lehigh Valley Railroad Company from a point of junction on its existing line at Union Springs eastward to the City of Auburn.

Q. That was built in 1899 with money furnished by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And for which the Lehigh Valley took stock, dollar for dollar? A. Yes, sir.

Q. Take the Geneva and Sayre Railroad. A. The Geneva and Sayre Railroad was a new corporation created upon the reorganization of its predecessor, the Geneva, Ithaca and Sayre Railroad, which had been sold under foreclosure proceedings in 1889.

Q. At that time was it bought in by or on behalf of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. The Lehigh Valley Railroad Company having been previously interested in it? A. Yes, sir.

Q. On that foreclosure it was, as I understand, reorganized and incorporated into the Geneva and Sayre Railroad? A. Yes, sir.

Q. What was the line of the Geneva, Ithaca and Sayre at the time of its reorganization? A. It owned a

line of railroad from the State line of Pennsylvania northward to Ithaca, and thence to Geneva with a branch from Ithaca along the west shore of Cayuga Lake to Cayuga.

Q. That Geneva, Ithaca and Sayre Railroad Company in turn was the result of a merger of the previous Geneva, Ithaca and Athens Railroad, and the Cayuga Southern Railroad? A. Not precisely. The Geneva, Ithaca and Athens Railroad was sold under foreclosure and reorganized as the Geneva, Ithaca and Sayre Railroad. The Cayuga Southern Railroad was merged into the Geneva, Ithaca and Sayre Railroad in 1879.

Q. As I understand now, the Geneva and Van Ettenville had itself built a road? A. Yes, sir.

Q. And after that it acquired the Auburn and Ithaca, and the Geneva and Sayre? A. Yes, sir.

Q. Did you state what the Geneva and Van Ettenville built itself? A. I am not sure, but I can state it. It built a line of railroad from Van Etten, on the original line of the Lehigh Valley system, westward and northward along the eastern shore of Senaca Lake to Geneva.

Q. How was that financed? By money furnished by the Lehigh Valley Railroad Company? A. The Lehigh Valley Railroad Company furnished the money.

Q. And took stock for the cost? A. Yes, sir.

Q. Or stock and bonds, which was it? A. Stock.

Q. The Lehigh Valley Railroad Company also paid the purchase price on the purchase of the Auburn and Ithaca Railway? A. The Auburn and Ithaca Railway Company is in two parts. Part of it was new construction, on money furnished by the Lehigh Valley Railroad Company, for which they got stock, paying dollar for dollar; four miles of it, close to Auburn, they had acquired by taking title under foreclosure proceedings under the sale of another railroad.

Q. But the Lehigh Valley Railroad Company paid the price? A. They did.

Q. And took stock? A. Yes, sir.

Q. The Geneva and Van Ettenville then, when constructed as far as Geneva, carried the Lehigh Valley Rail-

road, as a system, through the State of New York from the State line toward Buffalo as far as Geneva? A. Yes, sir.

Q. That was a part of its construction as an independent line to Buffalo? A. Yes, sir.

Q. This line that you say was built by the Lehigh Valley Railroad Company was a road by way of Burdette, the new line? A. That is as I have described it.

Q. The next road in the line to Buffalo is the Buffalo and Geneva Railway. When was that organized and built, and how financed?

A. It was organized in 1889 and built immediately thereafter. It was built with cash advanced by the Lehigh Valley Railroad Company, and it received stock of the Buffalo and Geneva in payment for such advances, dollar for dollar.

Q. For the amount of the cost? A. For the amount of the cost.

Q. That carried the main line through to Buffalo? A. Yes, sir.

Q. To the terminal at Buffalo? A. No, sir; to the city line of Buffalo.

Q. The Lehigh Valley Railway Company; where was that? When was it constructed and how was it financed? A. It was incorporated in 1882 and built a line immediately thereafter from a point in the city of Buffalo at Scott and Washington Streets, eastward to the City Line; went, in fact, beyond the city line a short distance. It was built on cash furnished by the Lehigh Valley Railroad Company, that company taking the capital stock of the railway company for such advances, share for share, dollar for dollar, for the cost of the road.

Q. Did that company connect with the Buffalo and Geneva after it was built? A. Yes, sir.

Q. Carrying the line of the Lehigh Valley partly in through Buffalo; is that right? A. Yes, sir; to the city of Buffalo.

Q. To what point? A. To Scott and Washington Streets, Buffalo.

Q. That is the present local terminal of the Lehigh Valley Railroad system in Buffalo? A. Yes, sir.

Q. Were these three companies, the Geneva, the Van Ettenville, Buffalo and Geneva and Lehigh Valley Railway, afterwards merged? A. The Geneva and Van Ettenville, the Lehigh Valley Railway Company and the Buffalo and Geneva Railway Company were merged on the 23d of June, 1890, into a new corporation called The Lehigh Valley Rail Way Company.

Q. All of the stock of those three railroads being owned by the Lehigh Valley Railroad Company and being exchanged dollar for dollar for stock of the new merged company? A. Yes, sir.

Q. The Rochester Southern Railroad; where was that, when was it built and how financed? A. The Rochester Southern Railroad Company was incorporated August the 14th, 1895, upon the merger of the Rochester and Southern Railroad Company and the Rochester and Honeoye Valley Railroad Company.

Q. Were these last two companies built by the Lehigh Valley Railroad Company? A. The Rochester Southern Railroad Company was built by advances furnished by the Lehigh Valley Railroad Company entirely. The Rochester and Honeoye Valley Railroad Company was built either by the Lehigh Valley furnishing capital to build it, or by purchasing from the former incorporators such property as the railroad had at the time of the purchase acquired.

Q. At the time of the merger, did the Lehigh Valley Railroad Company own all of the stock of those two companies? A. It did.

Q. And the stock was exchanged dollar for dollar for the stock of the Rochester Southern? A. Yes, sir.

Q. Did the Rochester Southern extend its line after it was merged? A. The line of the Rochester Southern Railroad Company, after the merger and on its completion, extended from the city of Rochester on the north to Hemlock Lake on the south, forming a junction with the main line of the Lehigh system at Rochester Junction.

Q. All the money for that road had been furnished by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And it had taken stock for the cost? A. Stock and bonds.

Q. Dollar for dollar? A. Dollar for dollar.

Q. The Depew and Tonawanda Railroad? A. The Depew and Tonawanda Railroad Company was incorporated to build a line from Depew to Tonawanda. The line was built, (it is about ten or eleven miles long) subsequent to 1895 or 1896. It extends from a junction with the main line of the Lehigh Valley Railroad system at Depew and runs in a northwesterly direction to a connection with the New York Central and Hudson River, the Niagara Falls branch, at North Tonawanda.

Q. For the purpose of giving the Lehigh Valley Railroad a western connection via Niagara Falls? A. Yes, sir.

Q. Is that the line that furnishes the connection with the Grand Trunk Road to the West? A. Yes, sir.

Q. How were they financed? A. The money to build this road was advanced by the Lehigh Valley Railroad Company, it, in turn, receiving the capital stock of the Depew and Tonawanda Railroad Company for such advances, dollar for dollar.

Q. The Seneca County Railway? A. The Seneca County Railway was incorporated in 1891, to build a line of railroad from a junction with the main line of the Lehigh Valley Railroad system, a short distance east of the town of Geneva, running in an easterly direction to the village of Seneca Falls.

Q. How was it financed? The same way? A. The Lehigh Valley Railroad Company advanced the money necessary to build the road and in payment for such advances received the stock and bonds of the Seneca County Railway dollar for dollar, for such advances.

Q. The Middlesex Valley Railroad? A. The Middlesex Valley Railroad is a line of railroad from Geneva, running in a southwesterly direction to the town of Naples. It is about twenty-nine or thirty miles long. It

was not built by the Lehigh Valley Railroad Company, but purchased as a completed railroad.

Q. It purchased the stock? A. It did, in this way; the owners of the Middlesex Valley Railroad sold to the Lehigh Valley Railroad Company all of its capital stock, amounting, I think, to $600,000, and $225,000 of its bonds, upon condition that it, the Lehigh Valley, would endorse its guarantee upon the remaining bonds, $375,000.

Q. The only consideration for the transfer of these securities to the Lehigh Valley Railroad Company was the guarantee of those bonds? A. Yes, sir.

Q. The Waverly and State Line Railway Company? A. The Waverly and State Line Railway Company was organized in 1867, to build a connection between the Pennsylvania and New York Canal and Railroad Company, and the Erie Railroad, at the town of Waverly, New York. It was a short line, only a few hundred feet in length, inside the State Line of the State of New York.

Q. This was financed in the same way? A. Yes, sir.

Q. Were those five railroads last mentioned, the Rochester Southern, Depew and Tonawanda, Seneca County, Middlesex Valley, and Waverly and State Line, merged into the Lehigh Valley Railway Company? A. Yes, sir.

Q. On what date? A. August the 3d, 1903.

Q. On what terms? A. The capital stock of the Lehigh Valley Railway Company was issued in lieu of the stocks of the merged companies.

Q. The latter being cancelled and the issue being dollar for dollar? A. Yes, sir.

Q. Now, take two other railroads: the Canal Railroad first. A. The Canal Railroad Company owned a line of railroad from the city of Elmira northward to the village of Horse Heads, where it formed a junction with the proprietary line of the Elmira, Courtland and Northern Railroad Company.

Q. When and how was that acquired by the Lehigh Valley Railroad Company? A. It was acquired by the

Lehigh Valley Railroad upon the acquisition of the capital stock and property of the Elmira, Cortland and Northern Railroad Company, it being part of that system.

Q. But it was a separate transaction? A. It was a separate company.

Q. Did the Lehigh Company acquire all the stock of the Canal Railroad Company? A. Yes, sir.

Q. The Elmira, Cortland and Northern Railroad; did the Lehigh acquire that also? A. The Lehigh Valley Railroad Company acquired the Elmira, Cortland and Northern Railroad as a completed railroad.

Q. When? A. I think it was 1896; that is right, 1896.

Q. Where did the Elmira, Cortland and Northern run? A. The Elmira, Cortland and Northern Railroad began, its western end, at the village of Horse Heads, running thence through Van Etten to the village of Cortland; then by a leased road of twenty miles to the village of De Ruyter; and from De Ruyter northward to Canastota.

Q. Was the Elmira, Cortland and Northern the result of a merger? A. Yes, sir.

Q. State what that was? A. It was not the result of a merger; I ought to change that. It was the result of the reorganization of two other predecessor railroads. The Utica, Ithaca and Elmira Railway Company had been sold under foreclosure in 1884, as had also the Cazenovia, Canastota and De Ruyter Railway Company. Both of them were foreclosed in 1884 and the purchasers of those railroads formed and created the Elmira, Cortland and Northern Railroad Company March the 7th, 1884.

Q. What was the Canastota and Northern; how did that come in? A. The Canastota and Northern Railroad Company owned a line of railroad from Canastota north to Camden, and it was owned in the same interest and by the same parties who owned the Elmira, Cortland and Northern Railroad.

Q. In 1905 it merged into the Elmira, Cortland and Northern? A. It did.

Q. Then the Elmira, Cortland and Northern Railroad and the Canal Railroad in February, 1905, were merged into the Lehigh Valley Railway Company? A. Yes, sir.

Q. Dollar for dollar? A. Yes, sir.

Q. Did the Lehigh Valley Railroad Company at that time own all of the stock of those two railroads? A. Yes, sir.

Q. So that after that merger, and ever since February, 1905, the Lehigh Valley Railroad Company has owned all of the capital stock of the Lehigh Valley Rail Way Company, which is a consolidation of all of the New York railroad companies that you have mentioned? A. All that I have mentioned; yes, sir.

Q. Since that there has been a merger of the Lehigh and Lake Erie Railroad? A. Yes, sir.

Q. What is the Lehigh and Lake Erie Railroad? A. The Lehigh and Lake Erie Railroad is a terminal railroad in Buffalo, branching off from the main line and running south and west to what is known as the Tifft Farm Terminal, owned by the Lehigh Valley Rail Way Company on the shore of Lake Erie in the city of Buffalo.

Q. How was the Lehigh and Lake Erie Railway Company built and financed? A. It was built upon advances by the Lehigh Valley Railroad Company, who received for such advances capital stock and bonds of the Lehigh and Lake Erie Railroad Company, dollar for dollar for such advances.

Q. Such advances in this case, and all the previous cases which you have mentioned, being for the cost of the property? A. Yes, sir.

Q. This Lehigh and Lake Erie was merged into the Lehigh Valley Rail Way also in June, 1907; is that right? A. Yes, sir; that is correct.

Q. Its capital stock all being owned by the Lehigh Valley Railroad Company, the Lehigh Valley Railroad Company is now the sole owner of the capital stock of the Lehigh Valley Rail Way Company, being the New York corporation? A. Yes, sir.

Q. You spoke of the Tifft Farm Terminal; what is that? A. It is a large property of several hundred acres in extent,

having a frontage of about six thousand feet on Lake Erie, within the limits of the city of Buffalo, and fronting directly on the harbor.

Q. All inside of the constructed harbor of Buffalo? A. Yes, sir.

Q. Being what proportion of the whole water front of Buffalo inside of the harbor? A. I do not believe I could furnish an estimate of that.

Q. What corporation owns the title to the Tifft Farm Terminal? A. The Lehigh Valley Rail Way Company.

Q. What is the Lehigh and New York Railroad? A. The Lehigh and New York Railroad Company was the result of the reorganization of the Southern Central Railroad Company, its predecessor. The Lehigh Valley Railroad Company became interested in the Southern Central Railroad Company in 1870. The Southern Central Railroad was incorporated in 1865, to build a line from the State Line of Pennsylvania to North Fair Haven, on Lake Ontario.

Q. The Southern Central Railroad connects with the Lehigh Valley System, that part of it which is the Pennsylvania and New York Canal and Railroad at Sayre? A. Near Sayre.

Q. At the State Line of New York and passes in a northerly direction to North Fair Haven on Lake Ontario? A. Yes, sir.

Q. Which is the Lehigh Valley's coal terminal on Lake Ontario; is that right? A. Yes, sir.

Q. And it is held by the Lehigh Valley Railroad and operated under a lease? A. The successor company, the Lehigh and New York Railroad Company, is held by the Lehigh Valley Railroad Company under a lease.

Q. Will you go on and state what is the Lehigh Valley Railroad Company's financial relation to that road? A. The Lehigh Valley Railroad Company owns a majority of the outstanding stock of the Lehigh and New York Railroad Company.

Q. Can you state what is the outstanding stock of that railroad and its bonded indebtedness, and the amount of

each of those held by the Lehigh Valley Railroad Company? A. The common stock of the Lehigh and New York Railroad Company is $411,700.

Q. Of which the Lehigh Valley owns how much? A. None. The preferred stock of the Lehigh and New York Railroad Company is $3,391,648, of which the Lehigh Valley Railroad Company owns a majority, or $2,225,334 par value.

Q. What are the terms, briefly, of the lease under which the Lehigh Valley holds the Lehigh and New York and operates it? A. The Lehigh Valley Railroad guarantees the interest on the outstanding bonded indebtedness of $2,000,000 of the Lehigh and New York Railroad. It undertakes to keep the property in repair and—I am speaking from memory now only—undertakes to pay a dividend on the stock of the Lehigh and New York, if earned.

Q. In other words, it keeps up the property, guarantees the bonds and then any net earnings it pays over to the stockholders of the Lehigh and New York Railroad? A. That is as I understand it.

Q. What is the Buffalo Creek Railroad? A. The Buffalo Creek Railroad is a belt line in the city of Buffalo, owned jointly by the Lehigh Valley Railroad Company and the Erie Railroad Company, one half each.

Q. Built by the two companies together? A. I do not recall.

Q. You do not know the terms on which the Lehigh has acquired half of the stock of the Buffalo Creek? A. I think the Lehigh Valley Railroad at one time owned it all and subsequently sold one-half its interest to the Erie Railroad.

Q. The stock it held has been issued to it dollar for dollar for what it cost? A. Yes, sir.

Q. The equipment of the Lehigh Valley Railroad Company is carried on the books of the company at a certain sum, which will appear in the account. How has that been arrived at? By valuation? A. In 1903 a committee was appointed to adopt a financial plan and report upon the property and equipment. This committee's report is in-

corporated in the Annual Report for 1903. Under the re-appraisement made by this committee a charge against equipment of $3,500,000 was made, which was credited to profit and loss. This report ended as follows: "The present high physical condition of the property, which must be absolutely maintained, the growth of the local and through business along its lines, the value of its coal properties and the generally improved condition of all its interests, fully justify the Board in the proposed action."

Q. Had there at that time been a re-valuation or re-appraisement, of the equipment of the Lehigh Valley road? A. Yes, sir.

Q. And it was carried into the books on that valuation? A. Yes, sir.

Q. Since that time the equipment has been carried on the books of the company how? At cost? A. At cost.

Q. Will you state the dates and facts as to the lease of the Lehigh Valley Railroad system to the Philadelphia and Reading Railroad Company? A. The railroad property of the Lehigh Valley Railroad Company was leased to the Philadelphia and Reading Railroad Company in February, 1892. Default was made under the terms of this lease in August, 1893, and the lease was terminated.

Q. On what date did the Lehigh Valley Railroad Company assume the operation of the property again? A. I cannot give the exact date now, but this was in August, 1893.

Q. The complaint in this action alleges that the Lehigh Valley Railroad Company and the other defendants entered into a combination for certain purposes, stated in the complaint, and it alleges that, as steps in the development of this combination and in furtherance of the purposes of that combination, the defendants in this suit, or some of them, engaged in and became parties to certain specified acts. One of those acts, as it is alleged, was that in or about January, 1898, the Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company, entered into an agreement under which the Erie Company acquired stock of the New

York, Susquehanna and Western Railroad Company, thereby bringing those two companies under a common control, with certain results specified. What had the Lehigh Valley Railroad Company to do with that transaction? A. Nothing.

Q. Neither at that time nor since? A. Neither at that time nor since.

Q. Did it in any way participate in or was it a party to, that transaction, directly or indirectly? A. No, sir.

Q. And never has been? A. No, sir.

Q. The complaint also alleges, as another step in the development of said combination, that the defendants, or some of them, became parties to another transaction, namely that, in or about January of 1901, the defendant, the Reading, and the defendant, the Central Railroad Company of New Jersey, entered into an agreement or combination under which the Reading Company acquired certain of the capital stock of the Central Railroad Company of New Jersey, with certain specified results which are alleged in the complaint. What, if anything, had the Lehigh Valley Railroad to do with that transaction? A. Nothing.

Q. Has it ever had anything to do with that transaction, either at the time of its occurrence or since? A. No, sir.

Q. Either directly or indirectly? A. No, sir.

Q. It has never participated in it in any way? A. It did not.

Q. As another step in the development of the alleged combination, it is alleged in the complaint that the defendants, or some of them, engaged in and became parties to another act, namely, that in 1899 the Erie Railroad Company acquired nearly all of the capital stock of the Pennsylvania Coal Company and also acquired all of the capital stock of the Erie and Wyoming Valley Railroad Company, and of the Delaware Valley and Kingston Railroad Company, for purposes specified in the complaint. What, if anything, had the Lehigh Valley Railroad Company to do with that transaction, if it occurred? A. Nothing.

Q. Either directly or indirectly? A. No, sir.

Q. Did it take any part in it at all? A. None whatever.

Q. Has it ever had any interest in it since? A. None.

Cross examination.

By MR. MCREYNOLDS:

Q. Where do the lines of the Lehigh Valley Railroad cross the lines of the Central of New Jersey? A. At Penn Haven Junction; that is a grade crossing. There are various overhead crossings.

Q. Where is Penn Haven Junction? A. Above Mauch Chunk. This is a grade crossing. It is on the main line above Mauch Chunk.

Q. Where in the neighborhood of New York do they cross or come together? A. The Lehigh Valley line crosses the New Jersey Central overhead at Communipaw, Jersey City.

Q. Where does the line of the Philadelphia and Reading cross the line of the Lehigh Valley Railroad? A. The Lehigh Valley crosses the line of the Philadelphia and Reading overhead near South Plainfield, in New Jersey.

Q. Do they come together at Bound Brook or thereabouts? A. There is a crossing just west of Bound Brook.

Q. They connect just west of Bound Brook? A. Yes, sir.

Q. And have for many years? A. Yes, sir; there is a connection there.

Q. Any freight moving over the Philadelphia and Reading to New York could be brought in from Bound Brook over the line of the Lehigh Valley Railroad, could it not? A. I presume it could.

Q. The coals that are brought down from the coal fields over the tracks of the Lehigh Valley Railroad are delivered at what point on New York Bay? A. Perth Amboy and Jersey City.

Q. Which place principally? A. Perth Amboy.

Q. How far is Perth Amboy from Port Reading? A. I do not know.

Q. You are not acquainted with that locality around there? A. Not sufficiently to give that distance at all.

Q. How far is it from Jersey City? A. I can only estimate, twenty or twenty-five miles.

Q. When did the Lehigh Valley Railroad Company get a terminus at Jersey City? A. In 1889, I think.

Q. Prior to that time how did it get freight moving from New York, intended to pass over its rails? A. By the Pennsylvania Railroad.

Q. Did it run its trains into the Pennsylvania terminus? A. It did.

Q. And received freight at the Pennsylvania terminus? A. We had our own piers in New York.

Q. Where did you connect with the Pennsylvania lines? A. At Metuchen.

Q. Tell us where that is, please. A. It is in New Jersey, about twenty-six miles south of Jersey City.

Q. There was some sort of a trackage arrangement between the two roads from that point into New York? A. I think so.

Q. Is general freight now delivered by the Lehigh Valley Railroad at Perth Amboy? A. I do not know.

Q. Do the Philadelphia and Reading and the Lehigh Valley Railroad interchange freight at or near Bound Brook? A. That I do not know.

Q. Does the Lehigh Valley Coal Company sell coals at New York harbor? A. I believe it does.

Q. How long has it been engaged in that business? A. Something over thirty years.

Q. When did the Lehigh Valley Railroad Company first acquire control of the Lehigh Valley Coal Company? A. About 1870.

Q. What other coal companies have been acquired by the Lehigh Valley Railroad Company, or the Lehigh Valley Coal Company, with the dates, so far as you can recall? A. Locust Mountain Coal and Iron Company,

control acquired prior to 1870; New York and Middle Coal Field Railroad and Coal Company, majority of stock acquired about 1869; Wyoming Valley Coal Company, acquired, I think, about 1885. That is all I can think of just now.

Q. How about Coxe Brothers & Co., Incorporated? A. Oh, yes, that was in 1905.

Q. How about the Righter Coal Company? A. That is now part and parcel of the Lehigh Valley Coal Company.

Q. It was acquired by that company when? A. I do not recall.

Q. How about the Seneca Coal Company? A. The Seneca Coal Company is now part and parcel of the Lehigh Valley Coal Company.

Q. When was it acquired? A. I do not recall the date.

Q. Approximately, can you give it? A. I think about 1900. That is approximately; I cannot give the exact date.

Q. How about the Connell Company? A. That is in the same category. It is now part and parcel of the Lehigh Valley Coal Company.

Q. When was it acquired? A. I do not recall the date.

Q. Can you not give it to us approximately? A. I can give a guess; about 1902.

Q. The Warrior Run Mining Company? A. That is now part and parcel of the Lehigh Valley Coal Company.

Q. Do you know when that was taken in? A. I think in 1904.

Q. Is Coxe Brothers & Co., Incorporated, an existing corporation? A. It is.

Q. What is its business? A. Mining coal.

Q. What does it do with its coal after it is mined? A. It is sold, I presume.

Q. To whom and how? A. I cannot tell you. I have nothing to do with that side of the business.

Q. Do you know what the business of Coxe Brothers & Co., Incorporated, was before it was purchased by the Lehigh Valley Railroad Company? A. No, sir.

Q. Do you know it was a coal company engaged in mining coal and selling it throughout the country? A. By general knowledge, yes; but intimately, no.

Q. It was also selling coals in New York harbor? A. I presume so.

Q. What companies mining and dealing in bituminous coals are owned by the Lehigh Valley Railroad Company? A. None, to my knowledge.

Q. From what regions are bituminous coals brought by the Lehigh Valley Railroad Company to New York harbor? A. I do not know.

Q. I show you the Fifty-fourth Annual Report of the Board of Directors of the Lehigh Valley Railroad Company to the stockholders for the fiscal year ending June 30th, 1908, and on page 12 of that report this appears: "Your company, during the year, sold its holdings of the capital stock of the Wyoming Valley Coal Company to the Lehigh Valley Coal Company, receiving in payment therefor $353,000 in treasury stock of the latter company, which was pledged with the trustee under the general consolidated mortgage." Are you acquainted with that transaction? A. Yes, sir.

Q. Does that statement here correspond with the facts? A. It does.

Q. What was the business of the Wyoming Valley Coal Company prior to the year 1907? A. It was a land owning company.

Q. Did it mine any coal? A. No.

Q. Merely owned the land? A. That is all.

Q. I find on page 13 of the same report this statement: "The reserve for depreciation of Coxe mines and properties was reduced by a million dollars, that amount having been applied to reduce the book value of the Coxe properties." What does that mean? A. I do not know.

Q. You are not acquainted with that bookkeeping entry? A. I am not.

Q. On page 28 of that same report, in the statement of securities owned, I find, under the sub-head, "Certificates of Indebtedness," "Lehigh Valley Coal Company,

$10,537,000." What does that mean? A. It means that the Lehigh Valley Coal Company issued its certificates of indebtedness to the Lehigh Valley Railroad Company for money which it owed the Lehigh Valley Railroad Company.

Q. Are those certificates now outstanding? A. They are.

Q. How long have they been outstanding? A. Since their issue.

Q. Yes, but when was that? A. I cannot give the exact date.

Q. Can you give us the year ? A. That is what I mean; I cannot give the year.

Q. How did it happen that the Lehigh Valley Coal Company owed the Lehigh Valley Railroad Company $10,000,000? A. I could not answer that question without consulting the books.

Q. Is it not true that for a long time the Lehigh Valley Railroad Company regularly advanced money to the Lehigh Valley Coal Company to carry on its operations? A. I do not think so—regularly.

Q. Is any interest paid on this indebtedness? A. I do not know.

Q. Who would know? A. The Treasurer, I presume.

Q. Do you examine these annual statements? A. I do.

Q. Have you ever discovered any entry that indicated that any interest had been paid on these certificates of indebtedness? A. I have not looked for that particular feature.

Q. Have you refrained from examining into that feature? A. No, sir.

Q. Is it not your understanding that no interest has ever been paid on that? A. I cannot correctly give an answer to that. I do not know. Interest may have been charged on the books and I would know nothing about it, because I am not the accounting officer.

Q. This entry among the assets of the Lehigh Valley Railroad Company of certificates of indebtedness by the Lehigh Valley Coal Company first appears, so far as we can

ascertain, in the Annual Report of the Board of Directors for the year 1905? A. That is about right, I think.

Q. Do you know how that indebtedness was incurred? A. I cannot give a correct answer without consulting the books.

Q. I read you from the report of the Board of Directors to the stockholders of the Lehigh Valley Railroad Company for the year 1901, page 25: "Under the existing arrangements the Lehigh Valley Coal Company is compelled to depend upon the Railroad Company for working capital to carry on its operation." Is that in harmony with your understanding of the situation in 1901? A. That being stated in the Annual Report for 1901, I believe it to be a correct statement.

Q. When was that arrangement, if ever, changed? A. I do not know positively that it was ever changed.

Q. Does the Railroad Company now furnish the Coal Company with operating capital? A. I cannot answer that.

Q. Again I read you from this same report of 1901, page 25: "The uninterrupted continuance of operations during the fiscal year just closed restored normal conditions, necessitating advances by the Railroad Company of $1,000,000, which amount is more than represented by the increased tonnage value of the coal in stock as compared with November 30th last year." Does that represent your understanding of the conditions? A. That being stated in the report, I believe the statement to be correct.

Q. I believe the Lehigh Valley Coal Company has never paid a dividend? A. It has never paid a dividend.

Q. What office do you hold in the Lehigh Valley Coal Company? A. Secretary.

Q. Is your office as Secretary of the Lehigh Valley Coal Company and as Secretary of the Lehigh Valley Railroad Company at one and the same place? A. They are.

Q. Do you keep the same set of books? A. I do not keep books.

Q. The men under you do, though? A. I keep the records.

Q. Do you keep the records at the self same office? A. I do.

Q. How do you distinguish between yourself as the secretary of one and the other companies? A. I find no difficulty.

Q. But tell us how? A. Each company has its separate minute books, its separate place for keeping records; it has its separate note heads, printed heads.

Q. All the records for both companies are kept by you? A. They are kept by me.

Q. The Executive Committees of these two companies, are they made up of the same individuals? A. No, sir, I think not.

Q. Who are on the Executive Committee of the Railroad? A. The president, and Mr. E. T. Stotesbury, Mr. George F. Baer, Mr. George F. Baker, Mr. Charles Steele and Mr. P. A. B. Widener.

Q. Who is on the Executive Committee of the Coal Company? A. The President; Mr. S. D. Warriner, Mr. E. T. Stotesbury, Mr. George F. Baker.

Q. Do you know what the bonded indebtedness of the Lehigh Valley Coal Company is? A. If I had the Annual Report I could tell, I think. The bonded debt of the Lehigh Valley Coal Company is $13,208,500.

Q. How much of that is guaranteed by the Lehigh Valley Railroad Company? A. $12,596,000.

Q. Who pays the interest on those bonds? A. The Lehigh Valley Coal Company.

Q. Does it earn now sufficient money to pay them? A. I believe so.

Q. When did it begin to earn sufficient money to pay it? A. I do not remember.

Q. There was a time in the recent past when the Lehigh Valley Coal Company was losing money annually, was there not? A. Yes, sir.

Q. Who paid the interest on those bonds then? A. During certain periods, the guarantor paid them.

Q. Has it ever been repaid? A. I do not know.

Q. That was being done as late as the year 1902, was it not? A. I do not remember the date, but that is probably right.

Q. How many of the bonds, as distinguished from the certificates of indebtedness, issued by the Lehigh Valley Coal Company are owned by the Lehigh Valley Railroad Company? A. The Railroad Company owns no Coal Company bonds.

Q. It did for a long period of years, did it not? A. I should not say, not for a long period of years, no, sir.

Q. I find in the Annual Report for 1904, under the head of Assets, page 30, "Bonds of the Lehigh Valley Coal Company, $6,400,000." Do you know what became of those bonds? A. That $6,400,000 was composed of two separate issues. $5,000,000 of that was created under a mortgage in 1897 and were deposited with the Trustee of the Lehigh Valley Railroad Company's mortgage and collateral trust deed of 1897. They were always used as collateral by the Lehigh Valley Railroad Company. When the mortgage and collateral trust deed of 1897 was cancelled, those bonds were also cancelled, and they are not now in existence.

Q. Those bonds then were used as security for the payment of the bonds of the Railroad Company? A. They were used as collateral for the mortgage and collateral trust deed of the Lehigh Valley Railroad Company. My answers have related to $5,000,000 of the $6,400,000.

Q. Is there any mortgage to secure bonds issued by the Railroad Company which covers property of the Lehigh Valley Coal Company? A. No, sir.

Q. I call your attention to the Report of the Board of Directors of the Lehigh Valley Railroad Company to the stockholders for the year ending November 30th, 1898, a paragraph on page 18. I will get you to identify the report. I want to read into the record therefrom the following, which occurs under the general head of "Lehigh Valley Coal Company:" "There was produced during 1898 from the collieries operated by the Lehigh Valley Coal Company and its tenants and other collieries operated by tenants of land companies in which the Lehigh Valley Coal Company or the Lehigh Valley Railroad

Company is interested through ownership of stock, a tonnage aggregating 4,426,138.17 tons of all sizes. Increase, 41,696.06 tons, as compared with the figures for 1907."

"The sources from which this tonnage was derived during 1898 are shown in the table below, together with the amounts derived from the same sources during the fiscal years of 1897, and 1896, viz.:

	1898	1897	1896
Lehigh Valley Coal Company.....	$2,609,126.00	$2,613,725.15	$2,819,756.18
Tenants of Lehigh Valley Coal Company...	1,113,447.15	1,139,003.03	1,492,155.18
Other tenants.....	703,565.02	631,713.13	786,278.04
Total tonnage.....	4,426,138.17	4,384,442.11	5,098,191.00

"The tonnage for 1898, with the exception of that from North Franklin, amounting to 58,113.04, was transported to market over the Lehigh Valley system."

"The capacity of the collieries operated by the Lehigh Valley Railroad Company in 1898 averaged about eighteen thousand tons per day, but the changes and improvements, which have been made during 1898, the results of some of which have not been felt as yet, together with those contemplated during the early part of 1899, will increase this amount by the time the busy season opens, to about twenty-two thousand five hundred tons per day."

"During the month of October, the total shipments over the Lehigh Valley Railroad amounted to 969,530 tons of anthracite coal (exclusive of trackage coals, and so forth) of which the Lehigh Valley Coal Company contributed 395,596 tons, or forty and eight-tenths per cent., making it the largest single month's shipment in the history of both the railroad and the coal company."

"The cost of mining at the collieries operated by the Lehigh Valley Coal Company, based upon shipments of all sizes and including, in addition to the regular mining expenses, all charges to general expense, royalty, sink-

ing fund, insurance, taxes, depreciation and improvement account, was per ton for the years 1896, 1897 and 1898 respectively; $1.8994, $1.5522, $1.7881."

NOTE.—No allowance was made in cost of mining in 1897 for depreciation of the old improvement account."

I will ask you to identify that report and state whether or not the extract is as read.

Mr. Platt objected and moved to strike out the question as irrelevant, incompetent and no foundation having been laid for its introduction.

A. That appears to be the report for the year stated and, if it is, the statements are those of the Board of Directors and therefore correct.

Q. I call your attention to the report of the Lehigh Valley Railroad Company to the stockholders for the year 1908, page 47, from which I read this: "The Lehigh Valley Coal Company and affiliated companies mined and produced during the year eighty-five and sixty-nine-one-hundredths per cent. of the anthracite coal transported by the Lehigh Valley Railroad Company." I will get you to identify that report and state if that appears as narrated. A. That appears to be the annual report for the year stated.

Q. I also read from the same report for the year 1908, page 48, the following: "The improvements already made, togther with those now in progress, tend not only to offset the increased expense of mining incident to the greater depth of the workings, and the longer underground haul, but also result in a greater percentage of prepared sizes of coal, the same having increased 9.38 per cent. in the last five years." I will get you to identify that extract.

(It is admitted by counsel that the above is an extract from the Annual Report.)

Q. Do you know anything about the result of the boat business to the Lehigh Valley Railroad Company? A. No, sir, I do not.

Q. You do not know whether it is profitable or unprofitable? A. I do not.

Q. Do you know when the Lehigh Valley Railroad Company began to transport coals produced by Coxe Brothers and Company, Incorporated? A. I do not.

Q. Do you know about the contracts with Markle? A. Only in a general way.

Q. Who settles under those contracts? Who is the actual individual who makes settlement with Markle?

(Objected to as irrelevant.)

MR. MCREYNOLDS:—In view of the objection the witness need not answer.

By MR. MCREYNOLDS:

Q. I read this from the report of the Board of Directors of the Lehigh Valley Railroad Company to the stockholders for the year 1905. It appears on page 14, at the bottom: "The $5,000,000 Lehigh Valley Coal Company second mortgage bonds and $1,846,00 Hazleton Coal Company bonds owned by the Lehigh Valley Railroad Company and formerly held as collateral under the mortgage and collateral trust deed, as well as the $2,000,000 Lehigh Valley Coal Company five and ten years coal pledged bonds were canceled. The properties of the Connell, Seneca, Righter, Warrior Run and Wyoming Coal and Land Companies were acquired for the Lehigh Valley Coal Company and, in the place thereof the Lehigh Valley Coal Company issued to the Lehigh Valley Railroad Company certificates of indebtedness and capital stock amounting to $11,202,000, which have been pledged under the general consolidated mortgage as additional collateral security."

(It is admitted by counsel that the extract read above appears in the Annual Report for 1905.)

(At 4.30 P. M., adjourned until Thursday, May 13th, 1909, at 10.30 A. M., to meet at the same place.)

Astor House, New York, Thursday, May 13th, 1909, 10.30 A. M.

Present:—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. Frank H. Platt, Esq., and George W. Field, Esq., representing Lehigh Valley Railroad Company and Lehigh Valley Coal Company. Hon. Adelbert Moot, representing Hillside Coal and Iron Company; Erie Railroad Company; New York, Susquehanna and Western Railroad Company; Pennsylvania Coal Company; New York, Susquehanna and Western Coal Company; and Clarence Coal Company.

Cross examination of DAVID G. BAIRD, resumed.

By MR. MCREYNOLDS:

Q. I show you the annual report of the Board of Directors of the Lehigh Valley Railroad Company for the year 1908, in which there appears the condensed general balance sheet of the Lehigh Valley Coal Company for the year ending June 30th, 1908, pages 50-51. What are the total assets as shown by that report of the Lehigh Valley Coal Company.

MR. PLATT:—This question, and all testimony as to the assets and liabilities of the Lehigh Valley Coal Company, is objected to as irrelevant and not tending in any way to sustain the charge of the combination set forth in the complaint.

A. The statement shows total assets $34,622,055.76.

By MR. MCREYNOLDS:

Q. The liabilities are the same? A. They are.

Q. What is the total capital stock of the Coal Company? A. $1,965,000.

Q. What is its funded indebtedness? A. $13,208,500.

Q. And its certificates of indebtedness? A. $10,537,000.

Q. As I understand from what you said yesterday, that funded indebtedness of $13,208,500 is bonds? A. It is.

Q. And of those bonds you stated that something more than $12,000,000 was guaranteed by the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And as to the remainder, how are they guaranteed? A. They are not guaranteed.

Q. And all the certificates of indebtedness, I understand, are owned and held by the Lehigh Valley Railroad Company? A. They are.

Q. For what were those $12,000,000 guaranteed bonds issued? A. Part of them were purchase money bonds for lands, and part of them were to make loans to repay indebtedness.

Q. Indebtedness to whom? A. Indebtedness of the Lehigh Valley Coal Company.

Q. To whom? A. That I cannot say.

Q. Was not a large part of those bonds issued to the Lehigh Valley Railroad Company for advances made by them to the Coal Company? A. I think so.

Q. Is the interest on those bonds paid by the Coal Company or by the Railroad Company at present? A. By the Coal Company.

Q. When did the Coal Company begin to pay the indebtedness on those bonds? A. I haven't the date.

Q. Can you give it to us approximately? A. Approximately 1903 or 1904.

Q. Prior to that time it was paid by the Railroad Company? A. Not altogether.

Q. But very largely? A. For some years the guarantor paid the interest; not all of the years prior.

Q. You have gone with some detail into the acquisition by the Lehigh Valley Railroad Company of various railroad corporations and railroad lines. Can you tell us how the acquisition by the Lehigh Valley Coal Company of the various companies which it has acquired have been financed? A. I cannot answer that question generally. Possibly I might in detail cases.

Q. Has it been done by the issuance of stock or by the issuance of bonds or by the payment of cash?

MR. PLATT:—I object to that as not calling for a fact but as a conclusion.

A. The Lehigh Valley Coal Company has issued its stock for some of these companies, not all of them. This bonded indebtedness, or purchase money mortgage, for some of those properties. That does not include all of it.

By MR. MCREYNOLDS:

Q. For which ones, stating the leading ones, has the Lehigh Valley Coal Company issued stock in order to acquire? A. I would have to go and look at my records and the books of the company before I could answer that in detail.

Q. Can't you give us some of them? A. I would rather not specify because I am not quite sure as to details without the records.

Q. Has the Lehigh Valley Railroad Company charged off on its books from time to time any of the indebtedness due it from the Lehigh Valley Coal Company? A. I am not competent to answer that question. I am not the accounting officer.

Q. You do not know? A. I do not.

Q. The annual reports of the Railroad Company and of the Coal Company are made at the same time to the stockholders of the Railroad Company, are they not? A. I think so.

Q. And published together? A. They are now.

Re-direct examination.

By MR. PLATT:

Q. The Lehigh Valley Railroad Company owns all of the stock of the Lehigh Valley Coal Company? A. It does.

Q. And the annual reports of the Lehigh Valley Coal Company are printed each year in the back of the annual report of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And when you say they are published together, that is what you mean? A. That is what I mean.

Q. In your examination yesterday you stated that you kept the records but that you did not keep the books. What is the distinction that you meant to convey? A. I mean that I have custody of all the minute books and other papers relating to the corporate existence of the companies.

Q. Do you not keep account books? A. I do not.

Q. And you do not have to do with the traffic? A. I have nothing to do with the traffic.

Q. You stated that $12,596,000 of the outstanding bonds of the Lehigh Valley Coal Company have been guaranteed by the Lehigh Valley Railroad Company, and that part of those bonds had been issued to the Lehigh Valley Railroad Company for advances made by it to the Lehigh Valley Coal Company. Is that right? A. That is right.

Q. You did not intend to say, did you, for what purposes those advances had been made? A. I did not.

Q. That is a matter which can be shown from the books of the company, is it not? A. Yes, sir.

Q. That is to say, the books of the Lehigh Valley Coal Company? A. Yes, sir.

Q. And the books of the Lehigh Valley Coal Company will also show the purposes for which the $10,537,000 of certificates of indebtedness have been issued, will they not? A. Yes, sir.

Q. I do not understand that you intended in any way to testify to the purpose for which those had been issued? A. No, sir.

Q. That is a matter that you could look at for counsel if he wished you to do so? A. Yes, sir.

Q. I call your attention to testimony offered by counsel for the Government appearing on page 565 of the column of the Government testimony, being an extract from the annual report of the operations of the Philadelphia and Reading Railroad Company for the year ending November 30th, 1893, in which it states in substance that a contract had been made by the Philadelphia and Reading Railroad Company with Coxe Brothers and Company for the transportation over the Reading System of a large tonnage of coal from the mines of that company to New York tide-water and other markets, the minimum amount to be furnished for transportation to New York tide-water to be 1,000,000 tons. It goes on to state that in

order to transport that coal under that contract the Reading had built a railroad ten miles in length to connect its lines with those of the Delaware, Susquehanna and Schuylkill, controlled by Coxe Brothers and Co. Do you remember anything about that contract between the Reading and the Coxes and the construction of that line? A. I remember in a general way that there was a contract entered into between the Coxes and the Reading by which the Reading built a branch road up to a connection with the Delaware, Susquehanna and Schuylkill Railroad.

Q. I call your attention to a further statement from that Reading report of 1893, which states that that contract referred to in the last question was not being carried out, and that in consequence of a disagreement the transportation of the Coxe Brothers' coal and the D., S. & S. Coal had almost been entirely lost to the Reading Company. Do you know where the Coxe coal went, over what line it passed, after that occurrence? A. Yes, sir.

Q. Where did it go? A. On the lines of the Lehigh Valley Railroad.

Q. It was connected up with the Lehigh Valley, as you stated, at Lumber Yard or Stockton, and from that time passed principally over the lines of the Lehigh Valley Railroad? A. Yes, sir.

Q. How long did that continue? A. Thereafter.

Q. Up to the present time? A. Up to the present time.

Q. Do you know why the Lehigh Valley Railroad Company bought the stock interests in the D., S. &. S. and Coxe Brothers and Company in 1905? A. They purchased it undoubtedly for the purpose of assuring the tonnage of the Coxe mines to the Lehigh Valley System.

Q. To prevent the possibility of its going to the Pennsylvania Railroad or some other railroad? A. Yes, sir.

Q. You spoke yesterday on cross examination of the Lehigh Valley having acquired the Seneca Coal Company, Connell Coal Company, and certain other coal companies within recent years, and having turned them over

to the Lehigh Valley Coal Company. Did you mean that the Lehigh Valley Railroad had acquired the property or had acquired the stock of those companies? A. I meant to say that the Lehigh Valley Railroad Company acquired the capital stock of the respective companies named.

Q. Did the Lehigh Valley Railroad Company buy any coal lands or coal property? A. From these companies?

Q. From these companies, yes. A. No, sir.

Q. But only bought stock in the companies? A. Yes, sir.

Q. And transferred that stock afterwards—disposed of it—to the Lehigh Valley Coal Company? A. Yes, sir.

Q. For what purpose were the stocks of those coal companies bought? A. To assure the tonnage from the mines on the various properties to the Lehigh Valley system.

Q. And to prevent its going to some other railroad? A. Yes, sir.

Q. Has there been during the past years, and since the reorganization of the railroads, competition between the railroad companies for the coal tonnage in the anthracite coal regions? A. Yes, sir.

Q. Is that the reason why the Lehigh Valley Railroad Company had acquired interests in the stocks of coal companies? A. Yes, sir.

Q. If the coal stocks which have been acquired by the Lehigh Valley Railroad Company had not been acquired by it would it, in your judgment, have been possible for the Lehigh Valley Railroad to have continued as an operating railroad corporation? A. No, sir.

Q. Why not? A. It would have lost all the valuable coal tonnage.

Q. You mean it would have gone to competing railroads? A. It would have gone elsewhere to competing railroads.

Q. Take, for instance, the Seneca Coal Company, which is one of the companies mentioned yesterday, and

the stock of which was acquired by the Lehigh Valley Coal Company in 1900. Where was that located? A. In the Lackawanna Valley near Pittston.

Q. Near the lines of the Lehigh Valley Railroad? A. Yes, sir.

Q. Was it at the time of the purchase, its whole output, tributary to the Lehigh Valley? A. I think so.

Q. Was there at that time danger that that coal or some of it would go to some other railroad? A. I think so.

Q. When I say "go to some other railroad" I mean the tonnage pass over the lines of some other railroad? A. Yes, sir.

Q. What other railroad? A. The Lackawanna.

Q. And is that situation true either as to the Lackawanna or some other competing road as to the rest of these coal companies that you mentioned yesterday? A. I think it is.

Q. When I say "mentioned yesterday" I mean about which you were asked by Mr. McReynolds yesterday on cross examination? A. Yes, sir.

Re-cross examination.

By MR. MCREYNOLDS:

Q. You have just said that but for the purchase by the Lehigh Valley Railroad Company of the sundry coal companies which it has acquired from time to time that its tonnage of hard coal, in your opinion, would have gone to other roads. Are there other railroads which compete with the Lehigh Valley for the coal tonnage? A. Yes, sir.

Q. What are those roads? A. Philadelphia and Reading Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Delaware and Hudson Company, the Pennsylvania Railroad Company.

Q. How about the Erie? A. That is also a competing line.

Q. All those roads now are competing for the hard coal traffic? A. I believe so.

Q. And they all carry coals from the coal regions in Pennsylvania into other States? A. Yes, sir.

Q. Which is the most active competitor which the Lehigh Valley Railroad has? A. That would be a hard question to answer, from my standpoint.

Q. They are all active competitors? A. They are all active competitors.

Q. Each one of them is seeking the coals to take over its own lines to tidewater here at New York or other points in other States? A. Yes, sir.

Q. How long has that condition been existing in the coal regions? A. I think it has been existing since 1867 or 1868.

Q. And in order to gather to itself the control over the traffic lying in close proximity to those lines you think the Lehigh Valley Railroad Company purchased these various coal companies. A. Yes, sir.

Q. Which enables them to ensure the passing of that coal over its lines? A. Yes, sir.

Q. How does it enable it to do it? A. By control; stock ownership.

Q. What do you mean by "control"? Do you mean that the Lehigh Valley Railroad because of that stock ownership is able to dictate to these companies what lines their coal shall pass over? A. Yes, sir.

Q. There is no difficulty about that condition, is there? A. I do not think so.

Q. There is no trouble in the Lehigh Valley Railroad Company dictating to the Lehigh Valley Coal Company how it shall ship its coal, is there? A. That I could not say.

Q. Don't it always do it? A. I do not know whether it does or not.

Q. I thought you said that was the purpose for acquiring these stocks awhile ago? A. Possibly so.

Q. I thought you said emphatically that was the reason for buying them? A. You ask me now whether the Lehigh Valley Railroad does dictate to the Lehigh Valley Coal Company. I say I do not know specifically whether it does or not.

Re-re-direct examination.

By MR. PLATT:

Q. Counsel uses the word "dictate" to you. As a matter of fact, the Lehigh Valley Coal Company's output of coal, does all o. nearly all pass over the Lehigh Valley Railroad? A. It does.

Q. It originates on the Lehigh Valley Railroad and passes over the Lehigh Valley Railroad as far as the Lehigh Valley Railroad furnishes it mileage to destination? That is right, is it not? A. Yes, sir; that is right.

Q. As to whether it becomes necessary for any particular officer of the Lehigh Valley Railroad to stand up and dictate to any particular officer of the Lehigh Valley Coal Company, you do not know? A. I do not.

Q. And it does not make any difference anyway, does it? A. I don't think it does.

Q. It is a mere matter, in your mind, as to whether you use a hard word or not? Is that right? A. That is right.

Q. The fact is that the coal of the Lehigh Valley Coal Company furnishes a very large part of the tonnage of the Lehigh Valley Railroad Company? A. It does.

Q. And if the Lehigh Valley Railroad Company did not have the relation to that coal that has been described in the testimony in this case some other railroad company would jump on it quick and take it away from the Lehigh Valley Railroad, and the Lehigh Valley Railroad would not have much business? Isn't that right? A. That is right.

Q. And there would not be any Lehigh Valley Railroad to accommodate the people who want to use coal? Is that right? A. Yes, sir; that is right.

CHARLES E. FORSDICK, having been duly sworn, was examined and testified as follows:—

By MR. PLATT:

Q. What is your business? A. Public accountant.

Q. You are connected with the firm of Haskins & Sells? A. Yes, sir.

Q. They being certified public accountants engaged in business in this city? A. Yes, sir; and other cities.

Q. You are familiar with railroad accounts? A. Yes, sir.

Q. Were you ever connected with the Lehigh Valley Railroad Company? A. Yes, sir.

Q. In what capacity? A. In the capacity of general bookkeeper.

Q. How long? A. I was in the service of the Lehigh Valley Railroad Company for between six and seven years, three of the latter of which I was general bookkeeper of the company.

Q. When was that? A. From 1894, when I entered the service of the company, until the latter part of 1900, I believe.

Q. Since that you have been with Haskins & Sells? A. Continuously; yes, sir.

Q. Has your work been, or a large part of it, as a public accountant in railroad accounts? A. Almost exclusively.

Q. You are familiar with the books of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. And the different railroad corporations which have entered into the Lehigh Valley System? A. I am.

Q. Have you examined the books to which you have referred for the purpose of making up certain statements and balance sheets of the business of the Lehigh Valley Railroad Company and its constituent railroad corporations? A. I have.

Q. When have you done that? A. During the last six or seven weeks.

Q. You prepared certain statements from those books? A. Yes, sir.

Q. Those have been correctly and accurately prepared from the books of the companies? A. They have.

Q. The statements which I refer to are these which I hold in my hand at the present time? A. I recognize them as such; yes, sir.

MR. PLATT:—I offer in evidence a set of statements entitled, "Lehigh Valley Railroad Company, General Balance Sheets of this Company and its Antecedents at various dates of merger from November 30, 1864, to November 30, 1868," and I call your attention, just for an example, to the last sheet in that statement entitled, "General Balance Sheet of Companies merged into Lehigh Valley Railroad Company November 30, 1864," and "General Balance Sheets of Lehigh Valley Railroad Company before and after merger." In the first column of figures appears a balance sheet of the Lehigh Valley Railroad before the merger. Is that a statement taken from the books of the Lehigh Valley Railroad Company as they were immediately before the merger? A. It is.

Q. With the Beaver Meadow Railroad and Coal Company and the Penn Haven and White Haven Railroad Company? A. Yes.

Q. And the second column is a balance sheet of the Beaver Meadow Railroad Company taken immediately before the merger? Is that right? A. Yes.

Q. And the third column is the balance sheet of the Penn Haven and White Haven Railroad Company taken immediately before the merger? A. Yes.

Q. The fifth column is the balance sheet of the Lehigh Valley Railroad Company immediately after the merger? A. Yes.

Q. Are the other statements contained in this exhibit made upon the same principle? A. They are.

Q. All made up from the books of the company? A. Yes; with one exception. In the case of the foreclosure of the Quakake Railroad, the balance sheets there are respectively the Quakake Railroad before the foreclosure and then of the new company which purchased the properties of the Quakake Railroad.

Q. Wherever there is any condition of that kind it is shown on the sheet, is it not? A. Plainly shown on each of the sheets.

(Statement marked, "Lehigh Valley's Exhibit 4, 5-13-09, C. H. G.")

Q. This Exhibit 4 relates to the corporations which have entered into the Pennsylvania Corporation, the Lehigh Valley Railroad Company? A. Yes, sir.

MR. PLATT:—I offer in evidence a similar set of statements relating to the corporations which have entered into the New Jersey corporation, the Lehigh Valley Railroad Company of New Jersey and entitled, "General Balance Sheets of this Company and its Antecedents at various dates of merger, from November 30, 1872, to June 30, 1906."

Q. These statements have all been made from the books of the companies in the same way and have been accurately made? Is that right? Yes, sir.

(Set of statements marked "Lehigh Valley's Exhibit 5, 5-13-09, C. H. G.")

MR. PLATT:—I now offer a set of statements relating to the Lehigh Valley Railway Company, being the New York Corporation, and entitled, "General Balance Sheets of this company and its antecedents at various dates from May 25, 1874, to June 27, 1907."

(Set of statements marked "Lehigh Valley's Exhibit 6, 5-13-09, C. H. G.")

Q. Did you make up these statements from the books of the companies as stated in this Exhibit 6? A. Yes, I did.

Q. And they are correctly made up? A. They are.

MR. PLATT:—I offer in evidence a statement entitled "Lehigh Valley Railroad Company, General Balance Sheet, November 30, 1875."

(Statement marked "Lehigh Valley Exhibit 7, 5-13-09, C. H. G.")

MR. PLATT:—I offer in evidence a statement entitled "Lehigh Valley Railroad Company, General Balance Sheet of Wilkes-Barre and Harvey's Lake Railroad Company, merged into Loyal Sock Railroad Company, June

30, 1904, and a General Balance Sheet of Loyal Sock Railroad Company before and after merger."

(Statement marked "Lehigh Valley Exhibit 8, 5-13-09, C. H. G.")

Q. These last two exhibits, 7 and 8, were prepared by you from the books? A. They were.

MR. PLATT:—I offer in evidence statement prepared by Mr. Forsdick from the books of the company entitled, "Lehigh Valley Railroad System, Condensed Classification of the Invested and Current Capital, November 30, 1893; Consolidated General Balance Sheet November 30, 1893; Combined Balance Sheet November 30, 1893."

(Statement marked "Lehigh Valley Exhibit 9, 5-13-09, C. H. G.")

MR. PLATT:—I offer in evidence statement prepared by Mr. Forsdick from the books of the company entitled "Lehigh Valley Railroad System, Consolidated General Balance Sheet, June 30, 1908."

(Statement marked "Lehigh Valley Exhibit 10, 5-13-09, C. H. G.")

MR. PLATT:—I offer in evidence statement prepared by Mr. Forsdick from the books of the company entitled "Lehigh Valley Railroad Company, Statements for the period from December 1, 1893, to June 30, 1908, Resources and their Application; General Balance Sheets at beginning and ending of the period; Condensed Summary of Income and Profit and Loss of Fiscal Periods and Averages per Annum."

(Statement marked "Lehigh Valley Exhibit 11, 5-13-09, C. H. G.")

MR. PLATT:—I offer in evidence statement prepared by Mr. Forsdick from the company's books entitled "Lehigh Valley Railroad System, Condensed Classification of the Invested and Current Capital, June 30, 1908, and November 30, 1893, and Comparison; Consolidated General Balance Sheet June 30, 1908, and November 30, 1893, and Comparison."

(Statement marked "Lehigh Valley Exhibit 12, 5-13-09, C. H. G.")

(It is understood that these exhibits are to be printed, and that after counsel for the Government have an opportunity to examine them this witness may be recalled to testify in reference thereto.)

GEORGE N. WILSON, having been duly sworn, was examined and testified as follows:—

By MR. PLATT:

Q. Where do you reside? A. Philadelphia.

Q. You are the General Auditor of the Lehigh Valley Railroad Company? A. I am.

Q. How long have you been? A. Six years.

Q. I call your attention to a list of properties attached to a part of "Lehigh Valley Exhibit 10," being the Consolidated General Balance Sheet of June 30, 1908, the list being entitled "Investment in Bonds and Stocks of and Advances to Transportation Adjuncts." You are familiar with that statement, are you not? A. Yes.

Q. Are those securities—the bonds, stocks and advances mentioned in that statement—all owned by the Lehigh Valley Railroad Company? A. All except the item under "Advances, Lehigh Valley Transportation Company," which is due to the Lehigh Valley Railroad Company of New Jersey.

Q. All of the stock of the Lehigh Valley Railroad Company of New Jersey being owned by the Lehigh Valley Railroad Company? A. Yes.

Q. And with that exception this is a correct statement of securities that were on June 30th, 1908, owned by the Lehigh Valley Railroad Company, and of certain debts due from the corporations named under the head of "Advances to the Lehigh Valley Railroad Company?" A. That is right.

Q. And this item, "Lehigh Valley Transportation Company," is a debt due by that company to the Lehigh Valley Railroad Company of New Jersey? A. Yes.

Q. The column "Book Value," does that show the value at which these various items are carried on the books of the railroad company? A. It does.

Q. And does it show in all cases either the cost to the corporation of the securities or else a less sum caused by their having been, in some instances, marked down? A. Yes.

Q. Where they have been marked down it has been practically a nominal valuation, which appear there as one dollar—isn't that right—or, in one case, one hundred dollars? A. Yes; one hundred dollars in one case.

Q. And in the other case they are carried at one dollar, simply to carry them as a memorandum on the books of the company? A. Yes, sir.

Q. Nominal valuations? A. Yes, sir.

Q. And are these companies that I mentioned in the first column, all corporations whose property is in use in connection with the transportation business of the Lehigh Valley Railroad Company and its subsidiary railroad corporations? A. Yes.

Q. As to these companies to which advances have been made, are those solvent companies? A. Yes. Except this Philadelphia Grain Elevator Company.

Q. You except the case of the Philadelphia Grain Elevator Company, whose notes are carried at the nominal value of two dollars? A. Yes, sir.

Q. With that exception they are debts due from solvent companies? A. So considered.

Cross examination.

By MR. MCREYNOLDS:

Q. What connection have you with the Lehigh Valley Coal Company? A. General Auditor.

Q. You are also the general auditor of the Lehigh Valley Railroad Company? A. Yes.

Q. What are your duties as auditor of the Lehigh Valley Railroad Company? A. General supervision of the accounting department.

Q. What are your duties as auditor of the Lehigh Valley Coal Company? A. General supervision of the accounting department.

Q. Do you have anything to do with the making up of the annual statements of the railroad company? A. Yes.

Q. What? A. The preparation of such statements as are taken from the books of account.

Q. Have you anything to do with making up the annual statements of the Coal Company? A. Yes.

Q. What? A. The same.

Q. The same as with the Railroad Company? A. Yes.

Q. It appears from the annual report of the directors of the Lehigh Valley Railroad Company to the stockholders for the year 1908 that the Railroad Company holds certificates of indebtedness of the Lehigh Valley Coal Company to the amount of $10,537,000. How long has that item stood on the books of the Railroad Company?

MR. PLATT:—I object to that on the ground that it is not a subject on which this witness was examined in chief. You can examine him and make him your own witness.

MR. MCREYNOLDS:—We will as to these matters.

A. Since 1905, I think it is.

Q. What does it represent? A. It represents that those certificates of indebtedness are certificates issued by the Coal Company to the Railroad Company for capital stock of coal companies which the Lehigh Valley Coal Company purchased.

Q. From the Railroad Company? A. Yes; and for two bond issues, if I recollect right; in the nature of refunding.

Q. Two bond issues by what company? A. The Lehigh Valley Coal Company.

Q. Why would the Lehigh Valley Coal Company be issuing certificates of indebtedness for those bonds? A. If the Lehigh Valley Railroad held its bond and it was mutually agreeable to the two to exchange, I suppose that would be sufficient reason.

Q. That is what you mean, is it? A. Yes, sir.

Q. The Lehigh Valley Railroad Company held bonds of the Lehigh Valley Coal Company and they exchanged those bonds for those certificates of indebtedness? A. Yes; that is my recollection.

Q. About how much did those bonds that were exchanged for certificates of indebtedness amount to? A. My recollection is $5,000,000.

Q. And the rest of that $10,537,000 item was issued for stocks of various coal companies theretofore purchased by the Railroad Company and at that time transferred to the Coal Company? A. Yes; sold to the Coal Company.

Q. Do those certificates of indebtedness bear interest? A. No.

Q. Has any interest been paid on them? A. No. I would like to correct as to whether they bear interest. I do not know whether they read as bearing interest, but there is no interest taken into the accounts one way or the other.

Q. Do you know about a contract that exists between Markle & Co. and the Lehigh Valley Coal Company? A. I know there is a contract.

Q. Do you have anything to do with the settlements under that contract? A. To some extent, yes.

Q. What? A. That is to say, that certain statements are made or passed upon by my assistant and put through the books in the usual course of business.

Q. The contract provides for the sale of all the coals mined by Markle & Co. to the Lehigh Valley Coal Company, upon which the Coal Company is to get a commission of twelve and a half cents?

MR. PLATT:—I object to the witness being asked any questions on the subject of the Markle contract.

By MR. MCREYNOLDS:

Q. Is there more than one contract between Markle & Co. and the Lehigh Valley Coal Company relating to the sales of coal?

(Objected to by Mr. Platt.)

A. I cannot say.

Q. Is there a contract between Markle & Co. and the Lehigh Valley Railroad in reference to the use of any of the tracks of Markle & Co.?

(Objected to by Mr. Platt.)

A. I cannot answer that.

Q. Is there any payment made by the Lehigh Valley Railroad Company of which you are aware to Markle & Co. for the use of tracks?

(Objected to by Mr. Platt.)

A. Not of which I am aware.

Q. Who would know about that if there is such a contract?

(Objected to by Mr. Platt.)

A. I could ascertain.

Q. To whom would you apply to ascertain? A. I would find it from the records of my department.

Q. But you have no recollection of any such? A. No.

Q. Who pays the freight on the coals moving from the Markle mines to market over the rails of the Lehigh Valley Railroad? A. I cannot answer that.

Q. Is anything paid to Markle & Co., of which you are aware, by the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company except the selling price of the coal shipped from these mines less twelve and a half per cent. commission?

(Objected to by Mr. Platt.)

A. No.

(It is understood that the exhibits in reference to which this witness has deposed shall be printed, and that counsel for the Government, after having an opportunity to examine them, may recall this witness to testify in reference thereto.)

Re-direct examination.

By MR. PLATT:

Q. Do I understand you to say in answer to counsel's question that a commission of twelve and a half per cent. is paid? A. No. I did not state what the commission was. The counsel stated that.

Q. You merely meant to negative counsel's question without undertaking to make any affirmative answer as to what payments were made? A. Exactly.

Q. You do not carry in your mind what payments are made? A. No.

Q. It is a subject that can be ascertained by you from an examination of the company's papers and accounts, is it not? A. Yes, sir.

Re-cross examination.

By MR. MCREYNOLDS:

Q. Do you know what commission is paid on the sales of those coals? A. I do not from memory.

Q. Will you please look this matter up so when you are recalled for cross examination you can give us this information? A. Yes.

WILLIAM T. GRIER, having been duly sworn, was examined and testified as follows:—

By MR. FIELD:

Q. Where do you live? A. My legal residence is Philadelphia.

Q. You are located in New York? A. Yes, sir.

Q. What is your position with the Lehigh Valley Railroad Company? A. Coal freight agent.

Q. How long have you been so employed? A. Three years.

Q. Before that how were you employed? A. A short time prior to that for six months I was general manager of the Delaware River and Union Railroad; prior to that for six years I was in charge of the coal and freight interests of the Beech Creek Division of the New York Central Railroad.

Q. The Beech Creek Division is practically a bituminous coal road? A. Almost entirely.

Q. You were there how long? A. Sixteen years.

Q. During that period during which you were with the Beech Creek Division of the New York Central you were engaged almost exclusively in the relation to the traffic in bituminous coal? A. Yes, sir.

Q. Was your time occupied to an appreciable extent in the bituminous coal regions? A. I made frequent trips to the bituminous coal regions.

Q. Can you state some of the incidents to the handling of

anthracite coal which, in your opinion, make it more expensive to handle than bituminous coal? First, as to your experience, comparing now only the bituminous coal that you know about in the Beech Creek regions and the anthracite coal on the Lehigh Valley, state the relative amount and complication of the lateral service in assembling the coal at the mines. A. I have in mind one piece of track in the Beech Creek district where they had a small branch only about seven miles long, and they had about sixteen collieries, operations, all accessible from this small piece of track. There were practically no grades, and a locomotive could pull a good size train of cars right along without any difficulty. There was no separation of the bituminous coal, such as we have with the anthracite, as to routes in the particular district; the coal all moved on that line in an easterly direction, and only one general separation made at the end of the line—that is, north and south. In the anthracite region, from my observation, there are materially heavy grades. The operations do not feed so generally the same branch as is customary in the bituminous regions. There is also a switching service in the anthracite region in handling what is known as condemned coal, coal that does not pass the inspection and is turned back again by the railroad to the breaker for repreparation without any additional cost. I think approximately about twenty per cent. of the anthracite coal is of that character. They have no such work to do in the handling or collection of bituminous coal. The grades I find on the Lehigh Valley Railroad are materially greater than those in Pennsylvania on the Beech Creek road. In fact an ordinary locomotive could haul a full train of cars from practically the originating point to the entire end of the line without breaking or without assistance.

Q. State the facts as to whether or not the bituminous coal travels, as a rule, in one general direction? A. It is my belief that on that particular road the bituminous coal generally travels in one general direction. In the Beech Creek region it was all in an easterly direction.

Q. The Beech Creek region is in the Clearfield Coal

Region, is it not? A. What is known as the Clearfield Coal Region of Pennsylvania.

Q. Are you familiar to a less extent with the entire Clearfield Coal Region? A. To a less extent.

Q. In your opinion, are the conditions which you have related in the Beech Creek region more or less typical of the conditions in Clearfield? A. I would not say they are generally typical. There are instances where the grades are just as good and favorable to the railroad as those of the Beach Creek regions. Of course, there are others where the grades are not severe, and I do not think, as a general proposition, the grades are so severe as those in the anthracite region.

Q. About the question of traffic going all in one direction. How does that work out on the Lehigh Valley Railroad in the coal regions? A. On the Lehigh Valley Railroad, in the coal regions, the coal is moving in opposite directions continually. There is a very large percentage of coal mined in what is known as the Lehigh region that goes north passing through the Wyoming region, and there is a lot of coal mined in the Wyoming region that goes south and passes the Lehigh Valley coal going north.

Q. In other words, the coal from the Lehigh or M. & H. Division of the Lehigh Valley Railroad, strikes the main line at what point? A. Penn Haven Junction.

Q. When coal is destined for the points on the north, it travels over the main line to what point? A. It travels all the way over the main line to Coxton and is there weighed and billed.

Q. If coal is assembled in the Wyoming region, either at Coxton or the other assembling yard, which is, I believe, at Port Bowkley, and is to go east, where does that strike the main line? A. Some of it strikes the main line right at Coxton, and some of it at a point right below Coxton, on what is called the Mountain Cut-off, and is carried on the Mountain Cut-off around to a place called Fairview, near the summit of the mountain, and carried on down the main line.

Q. So, from a point at Coxton, or Pittston Junction, which is near Coxton, and Penn Haven Junction, there is a constant hauling of the coal traffic one against the other? A. Yes, sir.

Q. What is the cause of the inability of your department to direct freight traffic in one general direction so that the Wyoming, or the Westerly coal, goes west, and the Lehigh, or the Easterly coal, goes east? A. I have in mind one reason, and that is that Lackawanna Railroad brings considerable Wyoming coal to the New York market. It is of a free burning character. And in order to meet that competition it is necessary for the Lehigh Valley Railroad to compete with the Lackawanna coal.

Q. In other words, there are certain kinds or qualities of coal which have trade names, the names of which are taken from the regions which have a market in certain parts of the country? A. Yes, sir.

Q. And the market calls the traffic, whether it is the longest or the shortest haul? A. Yes, sir. And the fact that the demand in the East necessitates a movement of coal from the Lehigh region to keep pace with the conditions in the West.

Q. Are the collieries in the anthracite region more or less difficult of approach than the collieries from which assembling has to be done in the bituminous region? A. According to my observation, the approach to the collieries in the anthracite region is more difficult than it is in the bituminous regions that I am acquainted with.

Q. Taking up very briefly the assembling and transportation of coal, for example in the Wyoming Division, the coal is taken from the collieries by mine crews, is it not? A. Yes, sir; I understand it is.

Q. And sent to one of two points. What are those two points? A. The main point, Port Bowkley. There is considerable coal assembled at Port Bowkley.

Q. That is in the Wyoming Division near Wilkes-Barre? A. Yes, sir. And another great assembling point is Coxton.

Q. Taking Port Bowkley coal that is destined for the East. Is that coal separated at Port Bowkley from the West coal? A. I understand there is a general separation there at Port Bowkley. I am not sure about it.

Q. Then, what course does the East bound coal take from Port Bowkley? A. The east bound coal takes an easterly direction to the Mountain Cut-off, a short distance below Coxton, and then passes down the main line to Fairview.

Q. And the western coal? A. Goes to Coxton yard.

Q. Is there any service performed as to classification or switching further than that performed at the Port Bowkley yard? A. I understand there is at Coxton on the north bound coal. They make some classification there as to the general direction in which the coal is going.

Q. As to the east bound coal, where is that taken either from Coxton yard or Port Bowkley—to what yard? A. Taken down to Packerton.

Q. That is on what division? A. That is on the Lehigh Division a short distance below Penn Haven Junction, where the coal is brought down from the Lehigh region.

Q. And then what takes place at Packerton? A. It is collected there and weighed, and I think they classify it there too as to the general directions from Packerton south to tide-water or connecting lines intermediate, or for local deliveries, and it is weighed at Packerton and billed from that point.

Q. Where does the tide-water coal go to on the Lehigh? What harbor points? A. Perth Amboy.

Q. What service or services are performed at Perth Amboy by the railroad? A. That is a very general proposition. The coal goes down to Perth Amboy and is frequently held in cars anywhere from five days to two weeks, awaiting the pleasure of the shipper as to the final disposition, and when the order for disposition is received, the car is moved on to the pier or trestle and dumped into the vessels. We also maintain down there

a very large storing plant capable of loading about two hundred thousand tons of coal, and we afford the shipper the opportunity of putting coal into this docking plant. That is, we dump the coal in there and we take it up again as they desire to re-ship it over the piers. This work is all done by the railroad without any additional cost to the shipper or consignee.

Q. In other words the storing and dumping into storage and lifting from the storage and the dumping from the cars into the vessels is all included in the rate? A. Yes, sir.

Q. What is the relative value of anthracite and bituminous coals? A. Take New York harbor as an illustration. The anthracite price there is five dollars, and there is bituminous coal now selling in New York harbor at—I know of instances as low as two dollars and forty cents f. o. b.

Q. That is, you are comparing with the bituminous the prepared sizes of anthracite? A. Yes, sir; the prepared sizes of anthracite.

Q. Does value properly enter into the making of a rate, the value of the commodity hauled, in your opinion? A. It is not entirely the value of the commodity. In my opinion, that in connection with the trade conditions and the rate that must be made to get the commodity to a market, and, of course, naturally being a more valuable commodity, the risk naturally would be greater in transportation.

Q. Is it not a well recognized principle in the making of tariffs that, to a certain extent, the question of the value of the article moved should enter into the making of the rate? A. It cuts a very important part.

Q. As an element? A. As an element.

Q. Are the rates on bituminous coal from the Clearfield regions affected by competition by way of water hauls from the South, such as through Newport News? A. Yes, sir. There is a good deal of competition between the northern bituminous coal and the southern

bituminous coal. The Chesapeake and Ohio and the Norfolk and the Western Railroad do a very large business into New England. In fact, I venture to say seventy-five per cent. of their entire tidewater coal goes to New England.

Q. What is the route? A. By Newport News and via Norfolk and up through the ocean.

Q. That is a long water haul? A. A long water haul, and they get boat freights there about the same, I think, as they get them in Philadelphia. The northern rates, of course, go to meet that competition, and *vice versa*.

Q. Is there any water competition in bituminous coal which meets the bituminous coal carried by rail to Buffalo? A. Yes, sir.

Q. Where does that come in? A. I understand there is considerable bituminous coal moved from the Ohio districts up to the Lakes and boat freights to Canada for certain markets that the Buffalo rates must meet in order to handle coal through Buffalo.

Q. Have you the total tonnage of anthracite coal shipped over the Lehigh Valley Railroad to Perth Amboy, Constable Hook and Jersey City, and all New York harbor points, for the year ending June 30th, 1908? A. Yes, sir.

Q. What was the total tonnage to New York harbor of anthracite coal? A. To New York harbor points?

Q. Yes. A. 3,438,024.25 gross tons.

Q. Have you reduced that to net tons? A. 3,850,-587.26.

Q. What was the revenue received by the Lehigh Valley on that tonnage, freight revenue? A. $4,687,825.84.

Q. And the average rate per gross ton received on that freight? A. $1.364.

Q. And the average rate per net ton? A. $1.217.

Q. You have taken all sizes of coal, have you not? A. Yes, sir.

Q. What is the rate to the lower harbor from the Clearfield Region on bituminous coal? A. I understand it is one dollar and fifty-five cents per gross ton.

Q. And the Jersey City points, known as the Upper Harbor points? A. The upper New York harbor points are five cents a ton higher than the lower points.

Q. That is one dollar and sixty cents? A. That is my recollection of the rates.

Q. You have examined the tariffs recently to correct that? A. Yes, sir.

Q. And that is the correct rate? A. Yes, sir.

Q. Have you prepared a table, or had prepared by the company's clerks, showing the distribution of the tonnage of anthracite coal for the year ending June 30th, 1908, showing what part of the Lehigh Valley coal traffic is to Perth Amboy and what part is local to other New York harbor points, and similarly as to other destinations? A. Yes, sir.

MR. FIELD:—I offer in evidence statement of distribution of tonnage of anthracite coal, year ending June 30th, 1908.

(Statement marked "Lehigh Valley Exhibit 13, 5-13-09, C. H. G.")

Q. Have you prepared a statement showing a history of the rates on anthracite coal for tidewater shipments going back to 1875? A. Yes, sir.

MR. FIELD:—I offer in evidence table of rates to Perth Amboy from 1875 to December, 1906.

(Table marked "Lehigh Valley Exhibit 14, 5-13-09, C. H. G.")

Q. Since 1887 the rates are as published with the Interstate Commerce Commission on Lehigh Valley Exhibit 14? A. Yes, sir.

Q. You also had a statement prepared, being a copy of page 97 of the Interstate Commerce Report of the Lehigh Valley Railroad for 1908, showing freight traffic movement for the year ending June 30th, 1908? A. Yes, sir.

Q. That appears on the annual report as filed with the Interstate Commerce Commission, does it not? A. Yes, sir.

MR. FIELD:—I offer in evidence the statement of the Lehigh Valley Railroad Company, freight traffic movement

for year ending June 30th, 1908, appearing on page 97 of Interstate Commerce Commission Report for 1908.

(Statement marked "Lehigh Valley Exhibit 15, 5-13-09, C. H. G.")

Q. As to the relative amount of anthracite coal that is handled on local rates in comparison with all other traffic handled on local rates, which kind of traffic is more generally handled by the Lehigh Valley on local rates rather than on joint rates? A. That is including the merchandise?

Q. Yes; comparing the coal and the merchandise. A. I think the greater tonnage is the merchandise, passing-over business.

Q. In other words, more of the merchandise traffic is handled on joint rates? A. Yes, sir.

Q. And that was the purpose of this exhibit, Lehigh Valley 15, which has just been introduced, to show that fact? A. Yes, sir.

Q. Will you please explain the purpose of this pamphlet which I hand you, being Interstate Commerce Commission No. D-300, and entitled "Lehigh Valley Railroad Company. Coal Freight Department. General Notice No. 101?" A. This is an allowance which the Lehigh Valley Railroad Company is willing to make on account of the weight of water that might remain on coal that has been washed in preparation.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 16, 5-13-09, C. H. G.")

Q. Will you please explain the purpose of General Notice No. 103, Interstate Commerce Commission No. D-321? A. This tariff authorized a percentage deduction in the weight—that is, the actual weight that is ascertained at the scales on coal consigned to various points where it is subsequently re-handled; the allowance being made to cover, to some extent, deterioration of the coal on account of the re-handling.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 17, 5-13-09, C. H. G.")

Q. Will you please explain General Notice No. 107, Interstate Commerce Commission D-338? A. I. C. C. No. D-338 provides an arrangement whereby shippers can have the benefit of proportional rates on coal to any point on the Lehigh Valley Railroad where we might establish stocking plants, the idea being somewhat similar to arrangements generally known as milling in transit.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 18, 5-13-09, C. H. G.")

Q. Will you also please explain General Notice No. 108, Interstate Commerce Commission No. D-339? A. I. C. C. No. D-339 covers a similar arrangement on shipments moving north, the previous tariff I. C. C. No. D-338 providing an arrangement on shipments moving south or easterly.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 19, 5-13-09, C. H. G.")

Q. Does the Lehigh Valley Railroad charge demurrage on cars held at Perth Amboy? A. On cars held at Perth Amboy containing coal for reshipment no demurrage charge is assessed.

Q. Does that amount to a material advantage to the shippers whose cars lay over at Perth Amboy? A. I believe it is considered quite an item to them. We have instances where coal has been held over two months.

Q. I believe you stated, did you not, that the storage could be prolonged there indefinitely without expense to the shipper? A. Yes. It has been used for as long a time as two years. We have had coal in there for two years.

Q. What is the practice at Perth Amboy as to allowance made on screenings? A. It is customary for the Lehigh Valley Railroad to reduce the rate on screenings down to a basis of one dollar and twenty cents per gross ton. That is, if there were twenty tons of screenings taken from prepared sizes, the rate on those twenty tons would be reduced from one dollar and fifty-five cents per gross ton to one dollar and twenty cents per gross ton, and if twenty tons of screenings were taken from Pea coal the rate would be re-

duced from one dollar and forty cents to one dollar and twenty cents a ton.

Q. I show you a schedule headed, "Lehigh Valley Railroad Company, rates from Jersey City, N. J., to Jeanesville, Hazelton," and other points, which contains in the first column references to tariffs filed with the Interstate Commerce Commission. Have you compared that with the tariffs or had it compared? A. Yes, sir; it has been compared with the tariffs and believed to be correct. The tariff rates are shown.

Q. That is simply a transcript of the tariffs now in effect as published with the Commission? A. Yes, sir.

Q. These points, Jeanesville, Hazleton, Wilkes-Barre, &c., are in the coal regions, are they not? A. Yes, sir.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 20, 5-13-09, C. H. G.")

Q. I show you a similar statement with the exception that the rates taken are from Perth Amboy, New Jersey. Are the same questions and answers applicable to that? A. Yes, sir.

MR. FIELD:—I offer that statement in evidence.

(Statement marked "Lehigh Valley Exhibit 21, 5-13-09, C. H. G.")

Q. I show you a table "Lehigh Valley Railroad Company, anthracite rates from Wyoming region," to various points on the Lehigh Valley Railroad. Was that prepared in your office? A. Yes, sir.

Q. And refers to the tariff rates of the company on file with the Interstate Commerce Commission? A. Yes, sir. Those points that are interstate are covered by the Interstate publication; those that are within the State are not filed with the Interstate Commerce Commission.

MR. FIELD:—I offer this statement in evidence.

(Statement marked "Lehigh Valley Exhibit 22, 5-13-09, C. H. G.")

Q. Please state whether or not the rate on anthracite coal from the mining regions to New York harbor points is in line, all things taken into consideration, with the

other anthracite rates of the Lehigh Valley all over the Lehigh Valley System? A. Yes, sir; they are quite in line with all the rates of the entire system.

Q. And if the anthracite rate to Perth Amboy and to New York harbor points is reasonable, then, in your judgment, the other rates are reasonable? A. Yes, sir.

Q. And this exhibit, "Lehigh Valley 22," was prepared among other things, for the purpose of showing that those rates were, all things considered, in line? A. Yes, sir.

Q. So that any particular carry of anthracite coal in different directions and for different distances bears its fair proportion, in your opinion, of the burdens of operating the road and maintaining it. A. Yes, sir.

Cross examination.

By MR. MCREYNOLDS:

Q. What are your duties as coal agent? A. Publication of tariffs, the making of rates.

Q. What sort of tariffs and what sort of rates? A. Coal tariffs and coal rates, anthracite coal and bituminous coal, and also coke.

Q. Do you make the rates for the railroad? A. The Lehigh Valley Railroad, yes, sir.

Q. You make the coal rates? A. Yes, sir, under the supervision of my executive officer.

Q. Who is your executive officer? A. I report to the second vice-president.

Q. Have you changed the rates since you have been connected with the company in any way? A. Any of the anthracite coal rates?

Q. Yes. A. Yes, sir.

Q. Have you changed the rates to New York tide points? A. No. sir.

Q. Either on bituminous or anthracite? A. We do not issue any bituminous rates. That is, originating rates. We issue local rates, but none to tidewater, however.

Q. Since you have been with the company there has

been no change in the anthracite rates of any sort? A. Oh, yes.

Q. Where? A. To Long Island Railroad points.

Q. Increased or diminished? A. I think they were increased.

Q. Did all the other railroads increase the rates at the same time? A. I do not know that they did. I think some of them did.

Q. Is not the rate to Long Island points the same on all the railroads? A. All Long Island Railroad points, or just Long Island City?

Q. No. Long Island Railroad points. A. I am rather inclined to believe they are all the same. There may be some difference at some places.

Q. They were all changed at the same time? A. Not exactly, I think. I think our rates went in first.

Q. How long? As much as fifteen minutes? A. No; I think a longer time than that. I think the Pennsylvania Railroad was about a month behind us. I am not sure.

Q. Are the anthracite rates for coals delivered f. o. b. over the Lehigh Valley Railroad different from the rates for deliveries for consumption on the Jersey side of the New York harbor? A. Five cents lower to Perth Amboy than they are to Jersey City.

Q. You did not quite understand what was in my mind. If coals are to be used in Jersey City, is the freight rate the same as if they are to be delivered f. o. b. at Jersey City? A. We haven't any f. o. b. rates at Jersey City. We only have one rate to Jersey City, and that is the track rate, one dollar and sixty cents.

Q. Is that for coals to be consumed in Jersey City? A. Yes, sir.

Q. And your rate to Perth Amboy is less five cents? A. Yes, sir.

Q. Why that difference? A. The rate of five cents less to Perth Amboy they have a water haul of about twenty miles to get their coal from Perth Amboy to Jersey City, and they naturally would require some rate less to meet the competition.

Q. That five cents is allowed because of the water-haul to get it into New York City? A. Yes, sir.

Q. Who is the principal shipper of coal over the Lehigh Valley Railroad to New York harbor points? A. The Lehigh Valley Coal Company.

Q. What per cent of anthracite coal brought from the anthracite region to New York harbor points over the tracks of the Lehigh Valley Railroad is shipped by the Lehigh Valley Coal Company? A. I could not give it to you accurately.

Q. Give us the best estimate that you can. A. By the "Lehigh Valley Coal Company" I would understand that you mean the coal that they sell as agents and the coal which they mine and all coal which we look upon as they being shippers of.

Q. Yes. A. My estimate would be—it is just an estimate; I might be wrong, considerably wrong—I should say about eighty-five per cent.

Q. Who else ships coal for sale at New York harbor points from the anthracite coal region to tidewater points at New York harbor? A. Over the Lehigh Valley Railroad?

Q. Yes. A. Meeker & Co., Gregory C. Kelly & Co., Whitmer & Kemmerer, Maderia, Hill and Company, the Estate of S. Van Winkle, J. S. Wentz & Co. That is about all I remember now. There may be a few more. The Reliance Coal Company does a little business. These are the shippers to New York harbor, not all the shippers outside of the Lehigh Valley Coal Company on the Lehigh Valley Railroad.

By Mr. Platt:

Q. When you spoke of eighty-five per cent., were you referring to tidewater coal or all coal? A. I am referring to all coal.

By Mr. McReynolds:

Q. Your eighty-five per cent. was the estimate of all the coal that moves over the Lehigh Valley lines, was it? A. To New York harbor points.

(The following question read: "What per cent. of anthracite coal brought from the anthracite region to New York harbor points over the tracks of the Lehigh Valley Railroad is shipped by the Lehigh Valley Coal Company?")

THE WITNESS:—You say "New York harbor points," and by that I understand you mean Jersey City and Constable Hook and Communipaw, and all those points bordering on New York harbor, as well as Perth Amboy, and roughly I would say eighty-five per cent.

Q. Is the freight rate to all these New York harbor points the same, with the exception of the five cents differential in favor of Perth Amboy? A. Yes, sir.

Q. How about the selling price? A. Now you are getting a little beyond my jurisdiction when you talk about selling price. I am not posted on them enough to give any accurate idea of it.

Q. Is the selling price by the Lehigh Valley Coal Company for those coals in Jersey City the same as the f. o. b. price? A. I could not tell you definitely. My idea is that it may be a little more.

Q. Don't you know it is a little more to all these New York harbor points on the Jersey side than the f. o. b. price? A. I presume it is. I cannot say definitely. I don't know.

Q. Coming specifically to the coal shipped which is passed over the docks on your f. o. b. price, what proportion of those coals are sent by the Lehigh Valley Coal Company? A. I am just in the same position. I will have to give you a rough estimate. My estimate would be that the Lehigh Valley Coal Company handles about ninety per cent. of it.

Q. What is your estimate of the loss by screening on prepared sizes of coal? A. I could not give it to you accurately. It does not run very heavy. We can obtain that and give it to you.

Q. Where do the bituminous coals that are brought over the tracks of the Lehigh Valley Railroad Company

to Perth Amboy originate? A. They originate in the Clearfield District of the Pennsylvania Railroad and the Clearfield District of the New York Central and Hudson River Railroad, the Western Maryland Railroad, the Baltimore and Ohio Railroad, and we bring some little coal down from the Buffalo, Rochester and Pittsburgh regions.

Q. Is the through rate on all that bituminous coal from those several regions the same? A. From the corresponding districts, yes, sir.

Q. What are the corresponding districts? A. For intance, the Myersdale District of the Baltimore and Ohio Railroad is the same as the Clearfield District of the Pennsylvania Railroad and the Beech Creek District of the New York Central, and the Reynoldsville District of the B. R. & P. That is what is known generally as the first group of mines.

Q. Give us the route along which bituminous coal from the Beech Creek Region would pass over the tracks of the Lehigh Valley Railroad to New York harbor? A. It moves from the Beech Creek District of the New York Central and Hudson River Railroad and over their tracks to a point called Newbury Junction, about three miles above Williamsport on the Philadelphia and Reading Railroad. The latter company haul the coal from Newbury Junction to the junction point of the Lehigh Valley Railroad known as Quakake, near Shenandoah. It moves thence eastward to a point near Penn Haven Junction; thence south over the main line to Perth Amboy.

Q. What is the freight rate upon bituminous coal moving from the Beech Creek Region over the line that you have just described? A. One dollar and eighty-five cents per gross ton.

Q. Is that the f. o. b. rate? A. We haven't any f. o. b. rate.

Q. Have you no f. o. b. rate for bituminous coal delivered at Perth Amboy? A. No, sir.

Q. How far is it from the point where these Beech Creek bituminous coals originate along the line you have described to Perth Amboy? A. About three hundred and thirty miles.

At one o'clock a recess was taken until two o'clock.

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2 O'clock P. M.

Present:—The Examiner. Messrs. McReynolds, Todd, Platt, Field and Moot.

Cross-examination of William T. Grier, resumed:—

By Mr. McReynolds:

Q. You told us before the adjournment that the Lehigh Valley Railroad Company had no f. o. b. rates on bituminous coal? A. Yes, sir.

Q. Has it at any point on New York harbor an f. o. b. rate? A. No, sir. There is a rate to Jersey City for coal loaded on cars and placed on floats at Jersey City.

Q. What is that rate? A. I think that is the same as the Jersey City local rate.

Q. What is that? A. One dollar and eighty-five cents.

Q. What other roads besides the Lehigh Valley bring bituminous coals to New York harbor points? A. The Central Railroad of New Jersey, the Philadelphia and Reading Railroad.

Q. Do they bring any of this Beech Creek coal? A. Yes, sir.

Q. What is the rate of the Philadelphia and Reading to New York harbor points? A. Their rate to Port Reading is one dollar and fifty-five cents.

Q. Why is it that they make a rate of one dollar and fifty-five cents to Port Reading and you make one dollar and eighty-five cents to Perth Amboy, just a little way off? A. That one dollar and fifty-five cents rate to Port Reading is a re-shipping rate for coal going beyond by water. We do not handle any re-shipments of coal going beyond by water going by way of Perth Amboy.

Q. Where do you handle it? A. We do not handle any going into bottoms. We handle some going into Jersey City on floats there.

Q. Why it is you do not handle any going into bottoms? A. Our port at Perth Amboy is pretty well taken up in handling anthracite coal.

Q. What becomes of the bituminous coals that your road takes to Perth Amboy? A. The local delivery there for the different industries on our tracks at Perth Amboy.

Q. And you confine your bituminous coal business to that? A. Yes, sir.

Q. Is there no other reason why you do not ship bituminous coals at Perth Amboy except that your yard is crowded? A. It is not our yard so much. It is the piers. There are times during the year when the entire facilities for reshipping coal at Perth Amboy are occupied in handling anthracite.

Q. Is there any other reason except that that you know of? A. I do not know of any at the present time.

Q. Was there heretofore? A. I do not know of any that existed in the past.

Q. You do not know of any discussion on that point? A. No, sir.

Q. How much higher rate is charged for anthracite coal by the Lehigh Valley Coal Company for local consumption at Jersey City than is charged for coals delivered f. o. b. at Perth Amboy? A. That is a question of price?

Q. Yes. A. I do not know.

Q. Don't you have anything to do with the selling of the coal? A. No, absolutely nothing.

Q. Who controls that? A. The different shippers sell their own coal.

Q. Don't you represent the Lehigh Valley Coal Company? A. No, sir.

Q. Nothing to do with it? A. No, sir.

Q. To whom is the coal shipped to Perth Amboy by the Lehigh Valley Coal Company consigned? A. Consigned to the Lehigh Valley Coal Company.

Q. Who takes charge of it when it gets there? A. The Lehigh Valley Coal Company gives shipping instructions to our agent at Perth Amboy as to the coal that is shipped and the boats to be furnished to take care of it.

Q. You have nothing to do with that? A. Nothing to do with the boats, no, sir.

Q. Does the Lehigh Valley Coal Company or the Lehigh Valley Railroad Company maintain a barge service? A. There is a barge service at Perth Amboy to New England called—I think it is called the Lehigh Valley Transportation Company, the Bee Line barges.

Q. Do they belong to the railroad company or the coal company? A. I think it is the railroad company.

Q. Do you know as to the operation, whether it is profitable or unprofitable? A. No, sir.

Q. What is the distance from Quakake to Perth Amboy over the lines of the Lehigh Valley Railroad? A. One hundred and thirty-two miles.

Q. What does the Lehigh Valley Railroad get for hauling bituminous coals over that one hundred and thirty-two miles—what proportion of the rate? A. Eighty cents.

Q. From what other fields do bituminous coals move over the tracks of the Lehigh Valley Railroad to tide in New York besides the Beech Creek? A. Pennsylvania Railroad. The Clearfield District of the Pennsylvania Railroad.

Q. What do you mean by "Pennsylvania Railroad" in that connection? A. That is the binuminous region accessible to the Pennsylvania Railroad in the State of Pennsylvania.

Q. Does the Pennsylvania Railroad deliver to the Lehigh Valley Railroad Company bituminous coals for delivery at New York harbor? A. We do not deliver any bituminous coal in New York harbor.

Q. New York harbor points. I mean Perth Amboy and Jersey City and those points. Where does the Penn-

sylvania Railroad deliver you that coal? A. Mount Carmel.

Q. How far is it from Mount Carmel to New York harbor? A. From Mount Carmel to Perth Amboy it is one hundred and sixty miles.

Q. What is the joint rate between the Pennsylvania and the Lehigh Valley on the coal? A. One dollar and eighty-five cents per gross ton.

Q. What does the Lehigh Valley Railroad Company get out of it? A. On an average, about ninety-two cents. All gross tons.

Q. Is there not a fixed percentage betweeen you? Isn't the rate fixed? Why do you say on the average? A. It depends upon what distance the Pennsylvania Railroad hauls the coal. There is a mileage pro rate arrangement on the basis of twenty-mile blocks, and the further the Pennsylvania hauls the coal the greater their mileage would be. So, taking an average mileage from the Clearfield district, we would get about ninety-two cents.

Q. How far is it from where these Clearfield coals are mined over the Pennsylvania Railroad until it reaches the Lehigh Valley and then down to Perth Amboy? A. Three hundred and fifty-eight miles from Clearfield.

Q. Do any anthracite coals originating on the lines of the Lehigh Valley go to Philadelphia? A. Yes, sir.

Q. How do they get into Philadelphia? A. By way of New Boston Junction and by way of Phillipsburg, New Jersey, and by way of Allentown and by way of East Penn Junction, Bethlehem.

Q. What lines take them from those junction points? A. The Pennsylvania Railroad takes the coal from New Boston Junction to Philadelphia, and I think also takes it from Phillipsburg to Philadelphia, and the Philadelphia and Reading takes it from Allentown, and they also take it from Bethlehem.

Q. What is the through rate on those coals that originate on the Lehigh Valley to Philadelphia? A. I think from the Lehigh region it is one dollar and seventy cents, the same as the Pennsylvania Railroad.

Q. What division is made between the Reading and the Lehigh Valley? A. That is the Pennsylvania Railroad rate that I gave you then, not the Reading.

Q. What division is made between the Pennsylvania Railroad and the Lehigh Valley? A. That is on a mileage pro rate. I cannot give you the exact figures on it. I can get it for you.

Q. Each road gets its proportion of the mileage? A. Yes, sir.

Q. Is the same true of the coals you deliver to the Reading road? A. No, sir.

Q. What division is there? A. They demand a specific rate from Allentown and from South Bethlehem. We make proportional rates to those junction points, and the two added together make the through rate.

Q. The through rate is the same with all companies? A. No, sir. I think the rate via the Reading Railroad would be higher than that in connection with the Pennsylvania.

Q. How do you pro rate the Central Railroad of New Jersey? A. The Central Railroad of New Jersey, we only have a very few rates with them, and they are generally divided on a mileage pro rate.

Q. Where does your mileage commence to be estimated? A. What few rates we have with the Central Railroad, there is one rate via Phillipsburg, New Jersey, and the other is via Roselle, to my recollection, a point over near Jersey City. We also have a tariff in connection with points on the New York and Long Branch Railroad. That moves via Phillipsburg also.

By Mr. Platt:

Q. That is not for New York points, though, is it? A. No, sir.

By Mr. McReynolds:

Q. The rates you have given apply from the Lehigh anthracite region. Do the same rates apply from the other anthracite regions? A. Yes, sir.

Q. Come to the line rates on coal. A. Excuse me a minute. To Philadelphia, the rates from the Wyoming

Region are higher than those from the Lehigh region. The same is true on the Pennsylvania. I think it is fifteen cents on the Wyoming Region higher.

Q. On line rates as compared with your f. o. b. New York harbor rates. Are they in any case higher than the through rates? A. No, sir. Not to intermediate points. To intermediate points there are none of them higher than the Perth Amboy rate.

Q. Where does the Perth Amboy rate start? A. My recollection is about Bound Brook.

Q. West of that it is a little less? A. I think it gets less then gradually.

Q. How about the price on those coals? A. I really cannot tell you about the price.

Q. The junction points on the Central of New Jersey and the Pennsylvania Railroad and the Reading that you have named, except Phillipsburg, are all in the State of Pennsylvania, are they not? A. Yes, sir. Outside of Roselle.

By Mr. Platt:

Q. The junction point that you spoke about with the New York and Long Branch? A. That is Phillipsburg. Roselle is in New Jersey. That is one of the points I mentioned in connection with the Central Railroad.

Q. How can you have a junction point with the New York and Long Branch at Phillipsburg? A. That is the connection with the Central Railroad for business going to the New York and Long Branch Railroad.

By Mr. McReynolds:

Q. You put in an Exhibit showing the rates to Jersey City and the rates to Perth Amboy. I notice that the rates on fifth class freight from Perth Amboy is two dollars and sixty cents and from Jersey City on the same class of freight three dollars. Why that difference? A. I do not know.

Q. I notice the rates from Perth Amboy on sixth class freight are two dollars to Janesville, and from Jersey City to Janesville two dollars and forty cents, Jersey City

being sixteen miles further. Why that difference? A. I suppose on account of the increased distance.

Q. I notice the first class and the second class and the third and fourth classes are the same. The distance is as much greater in one case as in the other, is it not? A. Yes, sir. I presume that is the result of the higher rate, the rates on the first four classes being so high that they could afford to spread it over a greater territory, and the lower the rate got the more they had to confine it in its application.

Q. Which roads bring in the largest amount of bituminous coal to New York harbor points? A. I should say the Pennsylvania Railroad.

Q. It dominates that? A. I think that they are the largest carriers of bituminous coal to New York harbor.

Q. Where is it carried? A. They have a place called Harsimus Cove in Jersey City, and then have South Amboy.

By MR. TODD:

Q. I notice that the rate to Buffalo given on the Exhibit showing the rates to different points is two dollars on prepared sizes. Is that the only rate to Buffalo? A. That is the only rate to Buffalo local on prepared sizes.

Q. That is the local rate to Buffalo? A. Yes, sir.

Q. What other rates are there to Buffalo? A. There is a rate of one dollar and seventy-five cents to Buffalo on Pea coal. Those are the only rates published to Buffalo.

Q. That is local, too? A. Yes, sir. And there are rates f. o. b. Buffalo for movement by water, which are in each case twenty-five cents higher a ton than the local rate to Buffalo. Those rates are f. o. b. vessels at Buffalo.

Q. Do you recall which tonnage is the greater, that which is f. o. b. vessels or local on the Lehigh Valley? A. My recollection is that the rail movement is greater than the—you mean which is the greater between the movement by water and that delivered local to Buffalo?

Q. Between the tonnage to Buffalo for shipment in vessels and that moved to Buffalo under these local rates? A. For local delivery to Buffalo?

Q. Yes. A. The movement by water is far greater than that delivered locally to Buffalo, but I would like to explain that those local rates to Buffalo do not apply only to Buffalo local deliveries but they are used in connection with the movement of anthracite coal to a great many points through the West, used in combination with the rates from Buffalo to the West.

By MR. PLATT:

Q. That is, by rail? A. That is all rail movement.

By MR. TODD:

Q. Do you know to what points principally the coal from the collieries of the Temple Iron Company are shipped? A. No, sir. I cannot specialize as to the originating point. I can give you some general idea of the movement of our coal.

Q. I thought perhaps you might know something about those particular collieries. A. No, sir.

Q. Will you give again—I have forgotten it—what you stated was the average rate per ton on anthracite coal to Perth Amboy? A. The average rate per gross ton to Perth Amboy and other New York harbor points for the year ending June 30th, 1908, $1.364 gross ton.

Q. Do you mean by that one dollar and three cents? A. No, sir. I mean one dollar thirty-six cents and four tenths.

Q. In making up that average you have based it on the published rates of all sizes? A. Yes, sir.

Q. I thought it was one dollar and three cents that you said, and that is the reason I went back to it. A. No.

Q. Did I understand you to say that some bituminous coal goes to New York harbor by way of Newport News and Norfolk? A. No, sir.

Q. You did not say that? A. No, sir.

Q. None does, in fact? A. No, sir. In rare cases they might bring some in, but as a general business proposition I do not believe there is any comes in.

Q. Where is Constable Hook? A. Constable Hook is a part of Bayonne City.

Q. See if you can fix it in relation to Jersey City and Perth Amboy? A. From Jersey City proper I should say it is about five or six miles down along the coast.

Q. It is nearer Jersey City than it is Perth Amboy? A. Yes, sir.

By MR. MCREYNOLDS:

Q. At what point do you get most of the bituminous coal which the Lehigh Railroad Company brings to New York harbor? A. Mount Carmel, I should say.

Q. From the —— A. Pennsylvania Railroad.

Re-direct examination.

By MR. FIELD:

Q. Is there any material portion of the bituminous coal handled by the Lehigh Valley Railroad that goes to New York harbor points? A. No. Our movement of bituminous coal to New York harbor points is not very great.

Q. Where does the bulk of the bituminous coal handled by the Lehigh Valley Railroad go? A. After leaving a point called Alpha, about six miles east of Phillipsburg, the business does not amount to very much—that is, east of Alpha.

Q. What point along your main line gets most of the bituminous coal? A. South Bethlehem, Pennsylvania, takes the largest quantity of any point we have.

Q. For what industry? A. The Bethlehem Steel Company.

Q. All of the bituminous coal that you handle is on joint rates? A. Yes, sir.

Q. And it is handled by you either as the terminating carrier or else as overhead business? A. Yes, sir.

Q. Do you perform any of the originating or assembling service for any of the bituminous coal? A. No, sir.

Q. How is this bituminous coal delivered to you at Mount Carmel? A. We receive a large tonnage at that point, larger than any of our junction points, and it comes to us generally in train loads.

Q. And is carried directly to South Bethlehem in train loads.

Q. And is carried directly to South Bethlehem in train loads? A. Yes, sir.

Q. There is very little switching or classification en route? A. No, sir.

Q. Are there any separate sizes or classifications that you handle of bituminous coal, or is it run of mine practically? A. It is practically run of mine. There is some screen coal and slack, but the largest percentage of that is run of mine in this part of the country. Where they use bituminous coal for domestic purposes they endeavor to size it up.

Q. Do you have any of those sizes to handle as a proposition of handling it by the Lehigh Valley Railroad? A. No. sir.

Q. Can you state, for this South Bethlehem coal how far the Lehigh Valley carries the most of that? A. Eighty-eight miles.

Q. That is received from what railroad. A. The Pennsylvania Railroad.

Q. What does the Lehigh Valley Railroad get for its proportion of that joint rate ? A. Sixty-eight cents gross ton.

Q. Does it receive for South Bethlehem some coal from the New York Central? A. No, sir.

Q. In any considerable amount? A. No, sir.

Q. I think you stated before the noon recess that the distance from the Clearfield Region when handled by the New York Central to Perth Amboy—that is, by way of the New York Central and the Lehigh Valley—was three hundred and thirty miles. Do you wish to correct that? A. Yes, sir. I find it is three hundred and two miles.

Q. On Exhibit 13 have you indicated as to the Buffalo coal tonnage what part of that tonnage goes to connecting lines at Buffalo in a note at the bottom? A. Yes, sir.

Q. To connecting lines, Lehigh Valley Exhibit 13, 1,203,210.02 tons. That is not put in ships; it is sent by rail? A. It is sent by rail to connecting lines beyond.

Q. Does it show there the amount that you ship? A. Yes, sir.

Q. Tifft Farm? A. Yes, sir.

Q. What is that amount? A. 752,782.15.

Q. That is what is known as rail and lake coal? A. The last item?

Q. The Tifft Farm item. A. The Tifft Farm item is lake coal.

Q. Has the growth of the production of small sizes had any effect upon the reduction of the average charge of anthracite coal? A. Yes, sir. Taking a lower rate it would naturally have a tendency to bring down the general average.

Q. Is the percentage of small sizes greater now than it was ten or twelve years ago? A. Yes, sir; materially greater.

Q. Will you look in the Annual Report for 1893 and state what the average rate per net ton per mile was in 1888? A. .981 cents.

Q. And in 1893? A. .826.

Q. Those are net tons? A. Yes, sir.

Q. What is the average rate per net ton per mile for 1908? A. .737 per net ton.

Q. The average charge which you gave on anthracite coal per ton to New York harbor points, I think you gave it as $1.364, that is not based upon the tariff rate but based upon the actual shipments, is it not? A. Yes, sir.

Q. In other words, you took the total tonnage and divided it into the total revenue? A. Yes, sir. Each rate size was kept separately and an actual charge arrived at, a net rate.

Q. That is, it was not done by adding each tariff rate together and dividing by four? A. No, sir.

Q. These bituminous hauls, how do they compare in relation to the length of the haul on the Lehigh Valley for anthracite, the entire haul of bituminous coal? A. Anthracite moves a great deal further than bituminous coal does. For instance, we send considerable coal to Chicago. There is no bituminous coal moved that distance.

Q. Is there any difference between the handling of the bituminous coal and anthracite coal as a general proposition as to the question as to whether or not the anthracite is distributed along the line in smaller quantities than bituminous? A. Yes. The bituminous, as a general proposition, is delivered in larger quantities at specific points, because bituminous is largely used in manufacturing industries, whereas anthracite is mostly for domestic purposes and necessitating deliveries at almost every station on the road.

Q. How does that affect the economy in using the cars? A. It naturally requires more work in making the greater number of deliveries.

Q. And about the rapidity of the return of the empty cars to the mines. A. The manufacturing concern using bituminous coal generally has modern facilities for promptly unloading coal and taking care of it, whereas a car of anthracite coal going to a small town, he will take the limit of time free almost invariably, and probably pay a dollar extra for another day to hold the car to unload it.

Q. How about the movement along the line between points. Is it more rapid in the case of the bituminous or not? A. Do you mean the coal moves more miles per day?

Q. Yes. A. I do not know as I could qualify on that. Q. Is there any return movement in the empty bituminous cars on the Lehigh Valley Railroad? A. Yes, sir; we have some return movement of the empties. For instance, the Pennsylvania Railroad. We use a great many of their cars for return loads of anthracite.

Q. That is, when the cars are unloaded at Bethlehem they are taken part way back to the junction point and loaded with anthracite and then turned over to the Pennsylvania Railroad? A. Yes, sir.

Q. So that the return movement is not entirely a light car movement? A. Not entirely, no, sir.

Q. From those empty cars there is a certain amount of revenue in anthracite coal turned over to the Penn-

sylvania Railroad? A. Yes; a natural increase of maintenance and equipment.

Q. Are you familiar with the percentage of the empty cars in the coal movement from Perth Amboy to the mining regions? A. I had a statement prepared showing the number of empty cars that were returned for a certain period, and I think it averaged about ninety-nine per cent. empty cars from Perth Amboy to the mines.

Q. You are coal freight agent, are you not? A. Yes, sir.

Q. And you have nothing to do with the rates or traffic in relation to general merchandise? A. No, sir.

Q. Other than coal? A. No, sir.

Q. So that these rates on Exhibits showing the first and second and third and fourth and fifth class rates and other commodity rates your only knowledge in relation to them is that they are the tariff rates? A. The tariff rates, yes, sir.

Re-cross examination.

By MR. MCREYNOLDS:

Q. The Lehigh Valley Railroad Company receives from time to time anthracite coal at junction points from other carriers, does it not? A. Very little.

Q. Where is the most important one of those points? What is the railroad that delivers it? A. There is not any point where we have a long haul of anthracite coal coming to our lines. What coal we get is mostly the local deliveries on our tracks at the junction point at which we receive it from the other line; Geneva, New York, on the New York Central, and Auburn, the same, and Buffalo.

Q. The Lehigh Valley delivers anthracite coal to connecting railroads at certain points, does it not? A. Yes, sir.

Q. Which is shipped on through bills-of-lading? A. Yes, sir.

Q. What is the arrangement when you deliver anthracite coal to a connecting line in reference to the

compensation to be received by the road which owns the cars in which the coal is transported? A. As I understand you, my answer would be this: The ownership of the car cuts no particular figure in the division of the rate.

Q. Is not any compensation allowed for the use of the car, and, if so, how is that determined? A. That is determined under a system of the American Railways where they allow twenty cents per car per diem. That is, they allow twenty cents per day for every day the car is on other lines.

Q. That is the system that is existing among the coal carrying roads? A. Yes, sir. I beg your pardon. It is twenty-five cents per day.

Q. So, if you deliver coal to the New York Central Railroad in one of your cars, you would get twenty-five cents a day for the use of that car while off your line? A. Yes, sir.

Q. And if you had on your line a New York Central car they would get twenty-five cents for it? A. Yes, sir.

Q. And an accounting system has been devised by which track is kept of that? A. Yes, sir.

By MR. PLATT:

Q. That rate applies to coal cars? A. That applies to all classes of cars.

By MR. TODD:

Q. On this sheet of rates which was put in as an Exhibit, I do not see Chicago. What is the rate to Chicago. A. Three dollars and fifty cents per gross ton.

Q. On prepared sizes? A. Yes, sir. On all sizes?

Q. Do any sizes except prepared sizes go to Chicago? A. No, sir.

Q. Is the rate from all the collieries to a given point, New York, Chicago or Buffalo, the same? A. Yes, sir.

Q. Were those rates per ton per mile that you gave from the report of 1893 I think it was, and the report of 1908, the rate per ton per mile on anthracite coal alone or on anthracite and bituminous? A. Anthracite coal.

By MR. PLATT:

Q. And that was all reduced to net tons? A. Yes, sir; net ton figures were given.

By MR. TODD:

Q. Please look at this report for 1896 and see if those are the corresponding rates per ton per mile for the years 1896 and 1895. (Pamphlet handed witness.) A. This does not separate as to the kind of coal. It simply says "Coal."

Q. What was the rate per ton per mile on all coal as shown in the report of 1896 for those two years? A. The average rate per ton per mile on coal, 1896, .646 cents; 1895, .640 cents.

Q. Does that report show how much of the coal tonnage of those years, or for either of them, was anthracite and how much bituminous? A. From this report I cannot see that it does. I do not see any separation made of the item "Coal." It gives the tonnage but not the earnings.

Q. Please give the tonnage. A. The anthracite tonnage in 1896, 11,534,854 net tons; 1895, 12,045,368 net tons.

Q. The bituminous. A. Bituminous coal and coke, 1896, 819,938; 1895, 456,194.

Re-re-direct Examination.

By MR. FIELD:

Q. Have you also prepared a statement showing the rates and rates per ton per mile from the Lehigh region and Schuylkill region similar to the one put in evidence as to the Wyoming region marked Exhibit 22? A. Yes, sir.

MR. FIELD:—I offer that in evidence.

(Statement marked, "Lehigh Valley Exhibit 23, 5-13-09, C. H. G.")

By MR. PLATT:

Q. Who pays the freight on Markle coal? A. To my understanding, the Lehigh Valley Coal Company pays

freight except on shipments moved in the region locally, and in that case I think that Markle pays them himself.

Q. Does the Lehigh Valley Coal Company charge it up in account to Markle and Company? A. Yes, sir; they charge it up to Markle and Company in settlements for coal, as I understand the matter.

Q. Is there any other contract or arrangement as to the shipments of Markle coal except the contract of 1889, which appears as Government Exhibit 151? A. I do not know of any.

Q. You never heard of any such thing? A. No, sir.

WILLIAM J. WILGUS, having been duly sworn, was examined and testified as follows:—

By MR. PLATT:

Q. What is your profession? A. Civil engineer.

Q. State generally what has been your experience in the construction and operation of railroads. A. I entered railroad service in 1885 as draftsman and rodman on what was then known as the Minnesota and Northwest Railroad, now known as the Chicago Great Western Railway, and continued with that company from about 1885 until 1890 in various capacities, having as my duties the designing and construction of railroads and supervision of their maintenance. Between 1890 and 1893, among other connections, I was with the Duluth and Iron Range Railway, locating their extenstion into the newly discovered Mosby and iron ore district through the Duluth and Winnipeg Railroad.

Q. What were your duties? A. The location of extensions. I was also with what was known as the Chicago Terminal Company, a subsidiary line of the Chicago Great Western, and in that capacity I had charge of the construction and maintenance of terminal improvements at Chicago. Also while with the Chicago Great Western I had charge of the terminal improvement at Minneapolis, Minnesota; St. Joseph, Missouri, and Kansas City. In 1893 I entered the service of the New York Central

and Hudson River Railroad as engineer in charge of maintenance and construction of the Rome, Watertown and Ogdensburg Railroad, at the same time acting as general assistant to the superintendent of operating matters. I remained there until 1898, and then became resident engineer on the main line, covering the territory between Syracuse and New York. Later I was promoted to a chief assistant engineership, and in 1899 as engineer of Maintenance of Way of the system, having charge of the maintenance of track and structures. Later I became chief engineer of the system, and in 1903, as I now remember, I became Vice-President in charge of construction and maintenance, and also as general assistant to the President on economic matters.

Q. Did that relate to operating methods and operating results? A. Yes. That involved a general study of operating methods and results as to cost of obtaining the modifications of the system, extensions and improvements. I remained in that position until 1907, and I then entered into private practice, and since then I have acted in that capacity, and also as president of the Amsterdam Corporation.

Q. Private practice as consulting engineer and consultant on railroad problems? A. Railroad problems generally.

Q. Have you made some personal investigation of the Lehigh Valley Railroad and its operation and maintenance with reference to a view to making up a statement and opinion as to the cost of transporting anthracite coal from the Wyoming district? A. I have.

Q. State what investigation you have personally made. A. I have made an investigation of the cost of handling anthracite coal from the Wyoming district, centering at Coxton to delivery to bottoms at Perth Amboy.

Q. Have you prepared a report on the cost of transporting anthracite coal from the Wyoming district to bottoms at Perth Amboy for the Lehigh Valley Railroad? A. I have prepared an analysis as a result of my investigation.

Q. You have been personally over the road in question and made some personal investigation of the physical features of it, have you not? A. I have.

Q. In this analysis that you speak of and which I hold in my hand, the figures which you have based it on you have obtained from the accounting officers of the Railroad Company? A. I have as regards the actual results of operation. There are a great many figures that are the results of personal investigation of my own or those in my employ, acting under my direction.

Q. You have had at your disposal the accounts and figures that have been made up by the Auditing Department? A. Yes, sir.

Q. And in this report on the margin are the names of different persons. Does that indicate the persons from whom you obtained the information? A. Yes.

Q. I see the name of J. I. Morrison. Who is he? A. Mr. Morrison is auditor of the company.

Q. The auditor in charge of the expenses of the company? A. Yes, sir.

Q. R. A. Van Houten. Who is he? A. He is a division engineer of the New Jersey and Lehigh Division.

Q. Where is the New Jersey and Lehigh Division? A. For the time for which this analysis was prepared it extended from Coalport to Perth Amboy and Jersey City.

Q. Coalport being where? A. Close to Mauch Chunk; later changed to Packerton.

Q. W. M. Kennedy. Who is he? A. He is division engineer of the Wyoming Division, which at that time extended from Coalport to Ransom.

Q. Ransom being on the main line of the railroad beyond the Wyoming Region? A. Yes, sir.

Q. When I say "beyond," I mean to the north of it. A. It is the northerly terminus of the main line.

Q. T. A. Lang. Who is he? A. He is the locating engineer in my employ who aided me in examinations as to the value of the railroad over which is transported the coal.

Q. Superintendent Moon. Who is he? A. Superintendent of the Wyoming Division.

Q. At the present time? A. Yes. I may add that on sheets "E" and "F" Messrs. Morrison, Van Houten, Turner and Baxter have also been the authorities, but their names have not been written on those sheets. Turner is master mechanic at Perth Amboy, and Mr. Baxter is superintendent of transportation.

MR. PLATT:—I offer in evidence this analysis.

(Analysis marked "Lehigh Valley Exhibit 24, 5-13-09, C. H. G.")

Q. Explain briefly the page marked "A" in this Exhibit and how it is constructed, and how the references from it to the succeeding pages are found, and also in the same way take up sheet "B." A. Two different methods have been employed in ascertaining the cost of handling coal from the Wyoming District to Perth Amboy, "A" being based upon the actual results shown on the Annual Report of 1907, in conjunction with the known actual operating expenses of the Wyoming and the Lehigh and Jersey Divisions; and "B" is a result obtained from the actual results not only of operation but also taking into account the interest charges and depreciation. The result obtained by method "A," $1.407 per gross ton is obtained by dividing the actual operating expenses, 0.897 per ton by the ratio of operating expenses, including taxes to operating revenue in 1907, which was sixty-three and seventy-seven one-hundredths per cent. In other words the total of $1.407 is divided into the element of operating expenses 0.897, which is sixty-three and seventy-seven one-hundredths of the total, and the remainder of 0.510 a ton, which is applicable to interest charges, additions and betterments, special reserve fund, and a balance for risks and deficits.

Q. In other words, you have taken the reported operating revenue of $36,068,432 and deducted from that the operating expenses, in which you have included the taxes, amounting to $23,000,162, leaving the net operating revenue of $13,068,270. That is right, is it? A. Yes, sir.

Q. The operating expenses, including taxes, of the whole system are sixty-three and seventy-seven one-hundredths per cent. of the operating revenue? A. Yes.

Q. You found the cost per gross ton of transporting the coal from the Wyoming District to Perth Amboy to be 0.897 cents? A. Yes, sir.

Q. And assuming that to be sixty-three and seventy-seven one-hundredths per cent. of the revenue, you have figured that out to be at a hundred per cent. to be $1.407? A. Yes.

Q. Take up sheet "B." Sheet "B" represents the actual cost of handling a gross ton of anthracite coal from the Wyoming District to Perth Amboy divided as to the cost at Perth Amboy, the main line haul from Perth Amboy to Coxton, and the cost of collection in the Wyoming District, and also shows the cost subdivided as between operating expenses, interest charges, depreciation additions and betterments, and risks and deficits, the details upon which those figures are based being shown by the statement sheet C, which follows.

Q. Statement "C," consisting of several sheets, takes up the cost in detail and shows how you have arrived at the figures in sheet "B' 'in the order in which they appear in sheet "B?" A. Yes. With the exception that on sheet "B" are shown items, "Additions and Betterments," "Risks and Deficits," and those are based on the analysis shown on sheet "A."

Q. Statement "C" makes reference to certain exhibits, and those various exhibits by corresponding letters follow statement "C?" A. Yes, sir.

Cross examination.

By MR. MCREYNOLDS:

Q. Under whose employment did you prepare this estimate? A. I suppose I am in the employ of the Lehigh Valley Railroad.

Q. When did you do it? A. The commencement of the study of the situation was last Winter, I think in February.

Q. February, 1905, you mean? A. Yes. That was followed by a personal examination of the territory in March, and assembling of details in April.

Q. Did you make an estimate also of what it cost to move bituminous coals over those same lines? A. Yes, insofar as I obtained the average cost of moving all kinds of freight over the two divisions mentioned, but not separating the bituminous coal as against anthracite.

By MR. PLATT:

Q. In preparing this analysis you have made certain divisions of expenses, such as divisions of common expenses between passenger and freight, and division of charges common to two or more divisions between operating divisions and other divisions. Are the bases of those divisions shown in each instance in Exhibit "B" of your analysis? A. Yes. Exhibit "B," as between passenger and freight business and as between divisions.

Q. Are the methods by which you have made such divisions as appear in that analysis and as shown there the right methods of making such divisions? A. In my judgment they are.

Q. I refer now in taking all of the different divisions of expenses and distributions which you have made in this report and the net of which appear in the different places. Wherever you have made those divisions you have made them on the basis that you believe to be right, and which, in your judgment, was the right method of making the division? A. Yes, sir.

Q. Based on your experience and knowledge of the railroad business? A. Yes, sir.

Adjourned until Friday, May 14th, 1909, to meet at the Astor House, New York, at 10.30 A. M.

Met pursuant to adjournment Friday, May 14th, 1909, 10.30 A. M., at the Astor House, New York.

Present:—The Examiner; Messrs. McReynolds, Todd, Platt, Field, Schaperkotter, Moot.

EDWARD J. SNOOK, having been duly affirmed, was examined as follows:—

By MR. FIELD:

Q. Are you in the employ of the Lehigh Valley Railroad Company? A. I am.

Q. Where? A. South Bethlehem.

Q. Your duties are what? A. Chief clerk in the car record office.

Q. Will you describe what records are kept in your department, as to the movement of cars on the Lehigh Valley System? A. We keep the record of the movement of all cars on the entire Lehigh Valley Railroad. That record is taken from the conductors' wheel report.

Q. These records show, as to the cars moving on the road, the mileage of light cars and also the mileage of full cars? A. They do.

Q. Have you prepared, from these records, a statement showing the number of empty coal cars returned to the mines which had been loaded to Perth Amboy and the percentage which the empty cars constitute of those which went loaded to Perth Amboy from the mines, for the year ended June 30th, 1908? (Showing statement to witness.) A. Yes, sir.

Mr. Field offered the statement in evidence. Marked, "Lehigh Valley Exhibit No. 25. May 14, 09."

Q. Does your department prepare, from month to month, reports for the offices of the company, showing car movements, loaded and empty? A. I do.

Q. I show you a second schedule and ask you if that has been taken from these monthly records which you prepare for the current use of the offices of the company. A. It has.

Q. Does this statement which I hand you correctly state the percentage of loaded and empty mileage of cars in the

New Jersey, Lehigh and New York Divisions of the Lehigh Valley Railroad? A. Yes, sir.

Q. Just what territory is covered by the divisions referred to in this exhibit? A. From Packerton to Jersey City and Perth Amboy.

Q. In the last item I note, "Lehigh Valley Milk Cars Eastbound, 99.9 per cent. loaded. Westbound, 98.5 per cent. loaded." Are those westbound milk cars loaded with full or empty cans? A. They are loaded with empty cans.

Q. Is that revenue or non-revenue freight, then? A. As far as I know, it is non-revenue freight. It is returning empty milk cans.

Q. You do not know whether a charge is made on empty milk cans, other than the charge originally made on the full? A. No.

Q. When you say 98.5 per cent. westbound loaded, you do not mean it is loaded with full milk cans? A. No, that is empty cans, all empty milk cans returning.

Mr. Field offered the statement in evidence. Marked, "Lehigh Valley Exhibit 26. May 14, 09."

Cross examination.

By MR. MCREYNOLDS:

Q. Coal is carried in specially designed cars, is it not? A. Not always, no; eastbound freight is.

Q. Ninety-nine per cent. of all eastbound coal that comes over your road is shipped in specially designed coal cars, is it not? A. Yes; I should say so.

Q. Those cars are built for the special purpose of hauling coal? A. Yes, sir.

Q. With a special design to that end? A. So far as I know.

Q. And they are not particularly adapted for any other purpose? A. They may be adapted to slag or crushed stone, limestone and stuff of that kind; coarse freight.

Q. The same thing is true of every road, that it hauls in specially designed cars a particular commodity, is it not? A. Yes. Those cars may be used for other commodities than what they are designed.

Re-direct examination.

By MR. FIELD:

Q. Do you know whether or not cars going to New England are coal cars or box cars? A. They are coal cars.

Q. Where does the greater percentage of the coal loaded in box cars go? A. West.

Q. In fact, all coal which goes in cars beyond Buffalo is how loaded? A. The very great majority is loaded into box cars.

Q. Do you know why that is? A. My understanding is that it is more on account of theft from the cars than anything else.

By MR. MCREYNOLDS:

Q. You mean the people in the West steal worse than those in New York? A. That is only an understanding of mine.

J. I. MORRISON, having been duly sworn, was examined as follows:—

By MR. FIELD:

Q. You are Auditor of the Lehigh Valley Railroad Company? A. Yes.

Q. How long have you been so employed? A. Six years.

Q. Before that where were you employed? A. In the West.

Q. I show you Lehigh Valley Exhibit No. 24, May 13, 1909, and ask you if you have prepared the figures contained in that Exhibit relating to the cost of handling anthracite coal, and if you have furnished those figures to Mr. Wilgus, who testified yesterday? A. Yes, sir.

Q. Will you kindly look at pages 1, 2 and 3 of the sub-division marked "C" in this Exhibit and state whether or not the figures representing freight expenses for the year ended June 30th, 1907, are from the records in your office? A. Yes.

Q. Do they correctly represent the records of your office? A. Yes.

Q. Now, referring to the sheets marked "A," pages 1 a[illegible], will you please state whether or not the figures representing freight expenses for the year ended June 30th, 1907, contained on those two pages, are from the records of your office? A. Yes.

Q. Are they correct? A. Yes.

Q. Will you please explain the meaning of the sheets marked "B," pages 1, 2, 3, 4, 5 and 6? A. Those sheets explain the method by which expenses common to both freight and passenger were divided as between freight and passenger, such other expenses as were not common being assigned specifically to either the freight or passenger service.

Q. Taking up the first page, will you please illustrate that, under the heading of "Maintenance of Way and Structures," showing how you apportioned the item "Repairs of Roadway," as between passenger and freight. A. Repairs of Roadway, such of it as was used exclusively by freight, was charged to the freight, and such of it as was used exclusively by passenger, charged to the passenger. The remainder was divided on the basis of car mileage passing over the tracks.

Q. In each case, where such an apportionment was made in whole or in part, the fact is indicated and the method of apportioning, on these sheets marked "B," pages 1 to 6? A. Yes, sir.

Q. What do you mean by the head "Basis of Division of Charges common to two or more Divisions between operating Divisions"? A. That is intended for the division of charges which do not apply specifically to one division. For instance, the general manager has jurisdiction over all divisions. H[illegible] salary would be divided, under that heading, on the basis of the road mileage between divisions, and then, his expenses, not being chargeable to either passenger or freight, would be assigned on the car mileage basis to either the passenger service or the freight service.

Q. Where the word "actual" is used, what does that

mean, on these sheets marked "B"? A. "Actual" means that, wherever it is possible, the actual must be used rather than any of these pro rates or arbitraries.

Q. How would those actual figures come to your knowledge? A. A freight station—for instance, our Jersey City freight station or Wilkes-Barre freight station—repairs of that building would be charged altogether to freight. The passenger station at Wilkes-Barre would be charged all to passenger.

Q. And the reports would come to you showing that as a freight proposition or passenger proposition? A. Yes, sir; and we would distribute that to either passenger or freight, because it is specifically applied to that service.

Q. In the same manner did these figures relating to disbursements come to your office at current periods, and apportioned by you or used actually, according to whether or not the disbursements could be properly charged wholly against freight or wholly against passenger? A. Yes.

Q. When were these apportionments made which you have indicated in the sheets marked "A"? A. They were made during the year ending June 30th, 1907.

Q. They were made in the usual course of business, were they not? A. Yes.

Q. For statistical purposes? A. Yes.

Q. For the officers' information? A. Yes, as information in regard to our costs.

Q. In other words, these apportionments were not made by you during the last month for the purposes of this suit nor for the purposes of testimony? A. Not at all, no, sir.

Q. When you were asked to give the disbursements and divide them between passenger and freight, you already had the apportionment made? A. Yes.

Q. And the figures given were given from figures which were already prepared in the current work of your office, over a year ago? A. Yes.

Q. These figures given in subdivision "A" are a correct transcript, are they not, in so far as they relate to the items of apportionments made and statements prepared in your office during the year in question? A. They are exact copies of them.

Q. Will you explain also the subdivision marked "C" A. Cost of operation, is that?

Q. Yes. Those figures are all taken, are they not, that is, the original figures on which the computation in "C" is based, from other parts of the same Exhibit? A. Yes, sir.

Q. As I understand it, in the subdivision marked "C" there are no original figures there, but the figures in "C" will all be found to be proved on other pages of the same Exhibit? A. Yes.

Q. That is true of "C 1" and "C 2?" A. Yes, sir.

Q. Please explain why it was necessary to make the deductions specified in sub-division "D?" A. The deductions made upon that statement principally apply to merchandise freight that ought to be eliminated in order to obtain a proper cost as applicable to all full loaded car freight, except one or two items which eliminate the Jersey City terminal and the Perth Amboy terminal.

Q. In other words, the figures which have been put in evidence on sheets "A" 1 and "A" 2, or subdivision "A," pages 1 and 2, contain, do they not, certain items which should, in fairness, be deducted from the expenses before those road expenses are apportioned as between coal and general merchandise freight? A. Yes.

Q. The reason is that those expenses are expenses which are applicable more particularly to merchandise freight and not to coal? A. Yes.

Q. What do you mean by "Labor at Stations," the first item on "D"? A. Labor at Stations is a charge which results from the labor of loading less than carload freight and therefore, as we do not load coal in less than carloads, we eliminate that.

Q. The total of those deductions is what? A. The total of the entire deductions—the net deductions?

Q. Yes. A. $1,086,894.46.

Q. These items on sheet "D," will be found, with one exception, will they not, on the sheets "A," pages 1 and 2? A. No, sir, not by items, they will not. All of those items except taxes are included in sheets 1 and 2 "A."

Q. With the exception of handling that freight on the five-cent basis at Jersey City? A. The cost is in there, but it is not under that specific item. It cannot be identified on the other statement.

Q. But, with the exception of that item of five cents to which Mr. Wilgus has testified, are the other items capable of identification in "A"? A. No, sir. The Maintenance of Equipment item of $115,653.98 does not specifically show on the other. It is buried in the total Maintenance of Equipment expenses.

Q. Then you have, however, taken them from the detail on which "A" is based? A. Yes, sir.

Q. And the figures in "D" are correct? A. Are correct, yes, sir.

Q. From the records in your office? A. Yes.

Q. With the exception, of course, of the figure which was testified to by Mr. Wilgus, of the five cents, which was not a figure prepared by you? A. Yes; and it does not show specifically that it does not include taxes.

Q. Does it include taxes? A. It does not, no, sir. They reduced that amount by the taxes here.

Q. Taking up now subdivision "E," under the subheading "C," on that page, "Operation," will you state whether or not those expenses, beginning with the expenses for superintendence, $2400, and totaling $144,221.75, were prepared by you? A. Yes.

Q. And they are correct from the records of your office? A. Yes.

Q. Is the item "Insurance," totaling $3912.77, correct? A. Yes.

Q. The next item, Proportion of General Expenses, two and seven-tenths per cent.; how was that worked out? A. The percentage of the general expenses of the

Lehigh Valley Railroad was taken and, inasmuch as this was a portion of the operation of the Lehigh Valley Railroad, the same percentage was applied to this cost as obtained on the Lehigh Valley Railroad system. In that way the general expenses—which, say, included my own salary—was also apportioned to this work, inasmuch as I had charge of the work of this Perth Amboy terminal.

Q. In other words, the general expenses were apportioned on the basis of the ratio between the other expenses at Perth Amboy and the total similar expenses of the system? A. Yes, sir.

Q. Taxes; that is actual at Perth Amboy, is it not? A. Yes, sir; as nearly actual as we can make it. We obtain that by taking the taxes which we get specifically applied to that property and then assigning to it a proportion of the general taxes which is not separated specifically and, added to the specific taxes, made this sum.

Q. On that same sheet above, under the subdivision, "A," "Current Repairs, year ending June 30th, 1908, $13,538.41," was that figure prepared by you? A. Yes, sir; that is the actual expenditure on that property for that year.

Q. And the next, Current Repairs, average for three years, $5361.86? A. That is the average for three years, for what is known as rather extraordinary repairs, something that comes occasionally, and it would not be proper to apply in one year, because some years, in that kind of work, are very much higher than others, and the average was considered fair.

Q. That is the result of taking the actual expenses for general repairs over three years, and dividing by 3? A. Yes, sir.

Q. Coming down to the subdivision "B,"Maintenance of Equipment, totaling $34,607; were those figures prepared by you? A. Yes, sir.

Q. Are they correct, from the records of your office? A. Yes; except that one of those items is obtained by applying an average rate of repairs on the freight cars, and that is improperly stated here in this sheet.

Q. Explain it? A. It reads thirty-two dollars and twelve cents per annum, for repairing of freight cars; that is an error. It should read fifty-two dollars and twelve cents per annum.

Q. I have fifty-two dollars and twelve cents in my copy; is your total $21,525.56? A. $21,525.56.

Q. That thirty-two is simply a misprint for fifty-two? A. Yes.

Q. But, when the multiplication is carried out, the $21,525.56 is based on fifty-two dollars rather than thirty-two dollars? A. Yes. I just explained that, because anybody could extend those figures.

Q. How did you arrive at that figure, fifty-two dollars and twelve cents? A. I took the total repairs and renewal costs of the Lehigh Valley Railroad for two years and divided it by the total number of cars used, by adding the total of each year together, and that gave me an average cost of fifty-two dollars and twelve cents for the system.

Q. Per car? A. Per car.

Q. And these four hundred and thirteen freight cars are the cars used at Perth Amboy exclusively for lifting the coal from the bins to the wharves? A. Yes, sir.

Q. And these are cars of a special size which do not go outside of the yard? A. Yes; that is right.

Q. That fifty-two dollars and twelve cents was based on two years, was it not, 1907 and 1908? A. Yes.

Q. Why did you take two years rather than taking the year 1908, which you have done in the other part of "E?" A. Because in 1908 more than half of it was during the panic period, when the revenues of the company were such that we could not afford to spend money in maintaining our equipment, and I, therefore, took two years in order to get a more just average to apply.

Q. Turning over to sheet "F," the percentage that you have used there is forty-five per cent. chargeable to the coal, under the heading "Maintenance of Way and Structures," also under "Maintenance of Equipment, Coxton Yards;" that percentage is a figure taken by you from records furnished by Mr. Moon, is it not? A. Yes, sir.

Q. Also, under the subdivision "B," Mr. Moon furnished the number of days, three thousand one hundred and two days? A. Yes.

Q. Also the same division of four thousand, one hundred and thirty-seven days? A. Four thousand, three hundred and thirty-seven days; yes.

Q. And Mr. Moon, or Mr. Kennedy, furnished you the other information contained in the subdivision "Maintenance of Way and Structures," relating to cost of maintenance per mile? A. Yes.

Q. Mr. Moon also furnished you, did he not, the item below under "Additional Crews"? A. Under "C," yes; $12,075.

Q. Also the figures, wages of assistant trainmaster, road foreman of engines, and Port Bowkley yardmaster's force, $1440, $1320 and $1680? A. Yes, sir.

Q. Now, with the exceptions that I have pointed out on sheet "F," are the figures taken from records in your department? A. Yes.

Q. And correctly represent the records of your department? A. Yes.

Q. Taking up sheet "G," are those figures based upon figures obtained in your department from your records? A. Yes.

Q. There is one exception there, is there not, "Total Passenger Train Ton Miles," No. 26? A. Yes, sir.

Q. Did you receive that from the Superintendent of Transportation? A. Yes.

Q. And that is correctly represented there according to the figures furnished by him? A. Yes.

Q. And they were furnished by him, were they not, from the records of his department, taken from day to day? A. Yes.

Q. A great many of these items which appear on "G" are items which also appear in the Annual Report of the company, are they not? A. Yes.

Q. And are other items taken or deduced from your locomotive performance sheet, as to ton mileage, &c.? A. Yes.

Q. Items 26 and 27, total passenger train ton miles, and total freight train ton miles, include, do they not, the weight of the engines in passenger and freight trains and the weight of the tenders on the freight trains, or do you not know? A. They include the locomotives and tenders on both trains, and also include the caboose on the freight trains.

Q. Turn to sheet "K;" where were those figures taken from? A. Sheet "K" is prepared in my office from my office records.

Q. Is that an extract or a preparation taken from your annual locomotive performance sheet? A. Yes.

Q. Just explain briefly what that is and its purpose. A. This is a statement prepared for the purpose of showing to our Operating Department the average cost of running our engines per mile run, and is prepared by taking the mileage made by each engine and dividing it into the cost of running the engine, such as engineer's and firemen's wages; coal burned in the engine; the oil used; repairs to the engine, and so forth.

Q. It is made in the usual course of business, is it not, a statistical sheet which is prepared each year? A. Each month and each year; yes, sir.

Q. And printed? A. Printed.

Cross examination.

By MR. MCREYNOLDS:

Q. When do you correct the mistakes that your office makes? A. Whenever I find them.

Q. What system of rectification do you follow? A. In the correction of mistakes?

Q. Yes. A. The clerks in the office check everything that comes into it as to extension, additions, and to prepare the records.

Q. A lot of these figures that you have given here are simply divisions of totals made according to your idea of what they should be, are they not? A. They are made in practically the general method outlined by railroad accountants.

Q. Did you include in these terminal charges amounting, I believe, to eleven and some odd cents the trimming charges of the boats? A. No, sir.

Q. They were not included? A. No, sir.

Q. Have those terminals ever been operated by the Lehigh Valley Coal Company? A. I do not know.

Q. They have not been since you were connected with the road? A. I think not; no, sir.

Q. What is your relationship to the Lehigh Valley Coal Company? A. I am not related; I do not have anything to do with it.

Q. You do not have anything to do with it? A. Not the least.

Q. Do you make up the figures from which the Annual Report of the Board of Directors to the stockholders is compiled? A. Some of the figures I have made up.

Q. Here is the Report of the Lehigh Valley Railroad for the year ending June 30th, 1908. It gives the total freight received for the transportation of coal; it also gives the total received for merchandise freight. It gives the tons of coal and coke hauled one mile and also the merchandise freight hauled one mile. Does the compilation of those figures come under your supervision? A. No, sir.

Q. Look at this Report and tell us what the rate per ton per mile was upon the merchandise freight shown to have been carried by this Report?

MR. PLATT:—You mean the average rate?

MR. MCREYNOLDS:—Yes.

A. You understand, of course, I did not prepare these figures.

Q. I understand; I am simply asking you to tell us what appears as the result of the figures given in this Annual Report. A. Five and forty-five one-hundredths mills.

Q. So that the Annual Report of the road for the year 1908 shows that the average receipts upon merchandise freight were five and forty-five one-hundredths mills per ton per mile? A. Yes, sir.

Q. The Exhibit which has been introduced by the Railroad Company shows that the earnings per net ton per mile upon anthracite coal is seven and thirty-seven one-hundredths mills. Is that your understanding of the situation? A. I do not know, sir; I assume it is.

Q. If that is as shown here by the Exhibit? A. Yes, sir.

Q. What is included in the terms "General Merchandise Freight?" A. It is all merchandise except coal and coke.

Q. So the result of that calculation is that the railroad receives what greater percentage for its anthracite coal tonnage than it does for its miscellaneous freight? A. Does that question mean per ton mile?

Q. Yes; how much? A. Fifteen per cent.

Q. So the result is, according to those figures, that the average rate per ton per mile on anthracite coal is fifteen per cent. higher than it is on the miscellaneous freights, including first, second, third, fourth, fifth and sixth classes? A. All merchandise freight, yes, sir.

Q. I have here the Annual Report of the Board of Directors of the Lehigh Valley Railroad to the stockholders for 1896, and I will ask you to examine it and put into the record what it shows to have been the average rate per ton per mile on coal passing over the lines of the Lehigh Valley Railroad for the years 1895 and 1896. A. The rate for 1896 was six and forty-six one-hundredths mills per ton per mile and for 1895, six and forty one-hundredths mills per ton per mile.

Q. Now the average rate per ton per mile on coal carried by the Lehigh Valley Railroad rose from 1895 to 1908 how much per ton per mile? A. Ninety-one one-hundredths of a mill.

Q. What per cent. of increase was there over the 1895 rate? A. Fourteen per cent.

Q. So the result of those figures is that, since 1895, the rate per ton per mile on coal has increased fourteen per cent? A. If the same methods were used to obtain the tonnage and revenue, yes, sir.

Re-direct examination.

By MR. PLATT:

Q. Do you know anything about what has been the increase in cost of wages and material during that time? A. Not except generally speaking, I know that our wages have gone up considerably, and all classes of material have increased.

Q. You have not any figures with you? A. No, I haven't any figures, except some data that I gave in the Meeker case, with regard to the prices which we paid and the wages which we paid.

Q. Those Exhibits are in evidence in this case? A. I do not know. I have not testified to them.

By MR. FIELD:

Q. If you will turn to page 42 of the Annual Report for 1908; this miscellaneous or merchandise freight, which you stated to be all freight other than coal and coke, includes, does it not, all of the tonnage contained on that page under the heading "Products of Agriculture?" A. Yes.

Q. For example, grain, 1,180,921 tons? A. Yes.

Q. And of products of the mines, ore, stone, sand and other like articles? A. Yes.

Q. Lumber? A. Yes.

Q. Bark? A. Yes.

Q. Other forest products? A. Yes.

Q. Petroleum? A. Yes.

Q. Pig iron? A. Yes.

Q. Stone? A. Yes.

Q. Sand? A. Yes.

Q. And cement? A. Yes.

Q. Will you please state the average mileage of the haul of merchandise freight during the year 1908? A. Two hundred and fifteen miles.

Q. Have you prepared a statement showing the average daily compensation of certain classes of employes and officers of the Lehigh Valley Railroad Company, first, as

of 1890, and second as of 1908, showing the increase or decrease in each case? A. Yes.

Q. As to the totals, what percentage of increase does it show? A. Thirty-one and a half per cent.

(Mr. Field offered the statement in evidence. Marked "Lehigh Valley Exhibit No. 27. May 14th, 09.")

Q. Those figures are as reported to the Interstate Commerce Commission, are they not? A. Yes.

Q. Have you prepared a table showing the comparison between the prices of certain items of material used in railroad operation in 1891, and prices for the same materials in 1908, showing the percentage of increase in cost? A. Yes.

(Mr. Field offered the statement in evidence. Marked "Lehigh Valley Exhibit No. 28, May 14th, 09.")

Q. Have you prepared a statement showing the average tons hauled per freight locomotive mile on the various operating divisions of the Lehigh Railroad for the year ended June 30th, 1908? A. Yes, sir.

(Mr. Field offered the statement in evidence. Marked "Lehigh Valley Exhibit 29. May 14, 09.")

Q. On Lehigh Valley Exhibit 29, under Average Tons per freight Locomotive Mile, Mahanoy and Hazleton Division, the tonnage is six hundred and nineteen and seven-tenths, which is the smallest tonnage per mile of any of the averages given on the Exhibit. Will you state whether or not the Mahanoy and Hazleton Division is almost entirely devoted to the transportation and assembling of coal? A. Yes.

Q. Can you approximately state the percentage in the division of anthracite coal to total freight traffic? A. Ninety per cent.; ten per cent. of merchandise.

Q. What is the division which is next in importance in coal traffic? A. The Wyoming Region.

Q. Which division carries the least coal? A. The Buffalo Division would probably carry the least, or the Pennsylvania; I should think the Buffalo.

Q. I show you a statement containing the average rate

per ton and average rate per ton mile, received by the Lehigh Valley Railroad on all freight, excepting anthracite coal, transported between tidewater and coal regions during the months of January, February and March, 1909. Was that prepared in the Auditing Department, by the Auditor of Traffic, or Auditor of Revenues? A. Yes.

(Mr. Field offered the statement in evidence. Marked "Lehigh Valley Exhibit 30. May 14, 09.")

Re-cross examination.

By MR. TODD:

Q. You have made some comparison in costs between 1891 and the present time, in the matter of transportation. Wiill you look at the Annual Report of the Lehigh Valley Railroad Company for 1891 and state what the average rate per ton per mile on coal was in that year and the average rate per ton on miscellaneous freight in that year. A. The average rate per ton on coal was .832 cents; on merchandise or miscellaneous freight .774 cents.

Q. "Coal" there embraces both anthracite and bituminous, evidently; so turn over on the page before that and give us what the tonnage of anthracite coal was in that year and what the tonnage of bituminous coal was. A. Anthracite coal 10,332,954 tons; bituminous coal and coke, 265,847 tons.

Q. That is all expressed in tons of two thousand pounds? A. Yes; two thousand pounds; net tons.

RICHARD A. VAN HOUTEN, having been duly sworn, was examined as follows:—

By MR. FIELD:

Q. What is your position with the Lehigh Valley Railroad Company? A. Division engineer.

Q. Of what division? A. New Jersey and Lehigh Division.

Q. Where does that extend? A. From Park View and Pertl. Amboy to Penn Haven Junction.

Q. I show you Lehigh Valley Exhibit No. 24, subdivision "M," pages 1 to 7 inclusive, and I ask you if you furnished to Mr. Wilgus the figures as to valuation shown on those pages? A. Yes, sir.

Q. Do they correctly represent the value of the terminal at Perth Amboy, in so far as it is devoted to coal? A. Those pages represent the valuation on the entire terminal. There are several pages separated to the different classes of business.

Q. When you separated it to show what the value of that part devoted to coal was, on what basis did you separate? A. I made up these several statements, one of that portion of the terminal which is used for all classes of business, including passenger; and I made other statements of the facilities which were used in handling coal and all other classes of freight, and then also separated, or made statements, rather, of those facilities that are used exclusively for coal and also exclusively for all other freight.

Q. As to structures, what basis did you use for valuation? A. I estimated on reproduction value.

Q. As to real estate? Present value? A. About what it is worth now, yes, sir.

Q. Just tell briefly your experience in the figuring upon cost of construction of railroads and extensions, and terminals. A. I have been one year division engineer on the Lehigh Valley, nearly a year; previous to that I was division engineer nine years on the Erie Railroad, Port Jervis and Susquehanna. Eight years previous to that I was assistant engineer on the New York and Erie Railroad.

Q. What, in general, are your duties as division engineer, in relation to construction of roads, acquiring of rights of way, and so forth? A. Working out the propositions for improvements or betterments, making estimates and submitting them, when approved, carrying out the work.

Q. You are thoroughly familiar, are you not, with the

values of rights of way, the cost of construction, and so forth, and materials entering into the cost of construction? A. Yes; I have handled that kind of work considerably.

Q. If you will look on sheet "E," Cost of Operation, Terminal Expenses at Perth Amboy, Maintenance of Ways and Structures, Dredging Slips and Channels, average $3000; was that figure furnished by you? A. Yes, sir.

Q. Is it correct? A. Yes, sir.

Q. From what sources did you get it? A. I took the total amount of dredging that had been done at Perth Amboy in four years, and I could positively separate $2500 per year to the dredging of the slips around the coal wharves and $1500 to the freight wharves. That left a thousand dollars per year that could not be definitely divided, so I put half of it to each.

Q. Did you furnish the figure as to $450 per mile for maintenance of tracks at Perth Amboy? A. Yes, sir.

Q. Is that correct? A. That is an estimated amount, necessary to maintain a mile of yard track per year.

Q. Have you confirmed that by referring to the actual figures for a period of six months? A. Yes. I have taken our actual expenditures on tracks for the Summer of 1908.

Q. What was the result? A. The result of that is $524 per mile, including all tracks in Perth Amboy.

Q. Would that be reduced if you took the Winter months? A. Yes; I think it would reduce it, make the average about as my estimate of $450.

Q. Will you please describe briefly the coal stocking equipment at Perth Amboy? A. The storage ground, as we call it, consists of ten trestles parallel, with bins between them, and underneath the bins and between the trestles are tunnels. The coal is dumped through the trestles into the bins and, when ordered out by the owner or orders are given by our shipping agent that he wants coal of a certain kind, it is drawn through the bottoms

of the bins into cars in the tunnels, and is switched around into the yard and then out on the wharves for shipment.

Q. Have you prepared a statement showing the daily average tonnage received at Perth Amboy? A. Yes, sir.

Q. For the year ending June 30th, 1908, what is the daily average tonnage received at Perth Amboy? A. Six thousand nine hundred and eighty-one tons.

Q. What is the total daily average of tons shipped? A. Six thousand seven hundred and forty-nine.

Q. Of the amount received, how much was dumped into stock? A. There were fourteen hundred and sixty-nine tons dumped into stock.

Q. How much lifted from stock to the dock? A. Fourteen hundred and twenty-two lifted.

Q. What is the percentage of the total coal received in Perth Amboy that is dumped into the stocking bins? A. Twenty and seventy-five one-hundredths per cent.

Q. On sheet "E" I notice, under sub-division "B," Repairs and Renewals seven locomotives. Please state whether or not there are seven locomotives at Perth Amboy exclusively used in handling the coal there? A. yes, sir.

Q. Also repairs and renewals, four hundred and thirteen freight cars. Are there four hundred and thirteen freight cars used there in the Perth Amboy yards? A. There are four hundred and thirteen sixty-thousand-pound capacity cars kept in the handling of stock coal, because the tunnels are small and cannot take any larger capacity.

Q. These are used to place in the tunnels under the stocking bins to receive the coal from the stocking bins? A. Yes.

Q. And are then carried to the docks where they are emptied? A. They are emptied into the boats and then go back again through the same operation.

Q. But they are held there throughout the year at Perth Amboy, exclusively for that purpose? A. Yes, sir.

Q. How is the work accomplished of dumping the coal from the cars into the bins? Is there any hand labor involved? A. In storing the coal?

Q. In storing the coal. A. Yes, sir. The various classes of cars, of course, require a different amount of labor, and the season of the year has a great deal to do with it. In cold weather the coal is more or less frozen and has to be picked loose to pass through the hoppers into the bins.

Q. That is in unloading the cars? A. In unloading the cars.

Q. In unloading the bins is there any particular difficulty? A. In taking the coal from the bins it is sometimes a very expensive operation, because the coal is allowed to remain in the bins for days and weeks—sometimes months, I guess—and if it has to be lifted in Winter weather, it becomes a very expensive operation.

Q. The work on the dock; please describe that briefly, in transhipping the coal. A. The road crews deliver their trains in what is known as the receiving tracks about two miles from the wharves. These trains are then taken by a yard engine and shoved over a hump, an artificial hill built in the yard, so that the cars can be classified by gravity. They are distributed into several tracks, called classification tracks, east of the hump, and classified in sizes and according to the ownership; sometimes according to the collieries from which the coal is mined. Then the cars are held there, practically in storage, in either the classification tracks or adjoining tracks, and are moved to the storage grounds or the wharves only upon the orders of the shipping agent, the coal shipping agent at the wharves. He notifies the yardmaster the number of tons required for certain shipments, or for stocking in a certain bin. The yardmaster then has to send a crew and get the required number of cars to make that tonnage. They are delivered on the wharf tracks and are left there by the yard engine and taken in charge by what we call the ram engine. That is an engine which handles

a car with a push pole on the side, that starts the cars and kicks them over the wharf. They are stopped at the chutes, where the boat is loading, and unloaded by gravity as much as possible; but, of course, the long cars have to be—a part of them has to be shoveled out. In Winter weather, before these cars are shoved out on the wharves by the ram engine, they have to stand a sufficient length of time to be steamed, to somewhat loosen up or melt the frost, and loosen up the coal so that a greater amount of labor will not be required or the boat held too long at the chute. Even then there is additional labor required on the wharves in unloading the cars. Then these cars when empty pass to the outer end of the wharf; they are taken in charge then by a small engine which carries them to the outer end of the wharf and starts them down an inclined track to underneath, where they are taken in charge again by the yard engine and placed in the tracks from which they are made up in trains to go back to the mines.

Q. If this coal is to be stocked, the progress of the car is interrupted at the entrance of the stocking bin yard and there put into stock? A. Put on the stocking trestles, unloaded there and then taken out and put down in the yard, where they are made up in trains, for the West again.

Q. Then when the coal is to be loaded from the bins, these special cars are put down into the tunnels, lifted out full, and then go through the same process on the wharves as you have described before? A. The same course as the road cars, yes, sir; except that when they come out from the tunnels—after they come back from the wharves after being unloaded, they are either put back in the tunnel tracks again, or held in a small system of tracks we have north of the wharves for holding those particular cars.

Q. Are there delays in this operation, expensive delays, involved by the inability of boats to get to the wharves on account of fogs, and so forth? A. Oh, yes. There is sometimes for days that we do not get a tow down there.

Q. This yard is right in the middle of the town of Perth Amboy, is it not? A. Right in the city.

Q. Are there expensive delays caused by grade crossings at that place? A. We have two railroad grade crossings between the receiving yard and the wharves, and very frequently our crews are held up; it not only delays the movement to the wharves, but it causes trouble because of delay of shipment, because we hold the boat too long.

Q. What is done in relation to fitting the cars up again for receiving the coal at Perth Amboy, in the way of repairs, if you know? A. We have a repair shop there that all cripples are switched into, and they make repairs to all coal equipment there.

Q. Where is the stripping of the cars done, or the patching them up for receiving fine sizes of coal? That is done at the mine? A. I think that is done at the mines, yes, sir.

Q. Does your division extend from Penn Haven Junction to tidewater? A. Yes, sir; Penn Haven Junction is the west end.

Q. And it includes the Packerton yards? A. Yes, sir.

Q. All east bound coal, I understand, comes through the Packerton yards? A. Yes, sir.

Q. What service is performed in relation to this coal at that place? A. All coal trains are received in what we call No. 4 track. It is a track parallel to the main track, about three miles in length. The road crews place their trains in that track and then it is rammed down, with a similar engine to that I have described as on the wharves at Perth Amboy, over scales where each car is weighed and classified according to terminals, in a system of ten tracks. It is then put together, made up into trains and sometimes—generally—hauled down to the lower yard, ready for the road crew.

Q. In other words, there is a classification there by terminals? A. Yes, sir; or, we might say, by destinations.

Q. Is a large proportion of coal handled over your division stored between Phillipsburg and Perth Amboy? A. There is a large storage plant at South Plainfield.

Q. What service does the railroad have to perform there in storing the coal and getting it out of storage? A. We perform the switching.

Q. That is, switching the coal cars? A. Taking them in and taking them out.

Q. Taking the empty cars out and switching the empty cars in to be filled? A. When they want to load again we deliver the empties to them and haul them down to the wharves.

Cross examination.

By MR. TODD:

Q. What is the route that barges take from Perth Amboy to New York City or Jersey City? A. I think most of them tow up between Staten Island and the New Jersey mainland, around through the Kill von Kull, I believe that is called; unless it is what we call the Bee Line tugs, or the lines that go to Boston. I think they come around the south end of Staten Island and go the outside route to New England.

Q. I was speaking of those which go to New York City. A. Those which go to New York City go up the back route.

Q. Up what you have called the back or inside route? A. Yes.

J. I. MORRISON, having been recalled, was examined as follows:—

By MR. FIELD:

Q. Will you look on the sheets of subdivision "E" of Lehigh Valley Exhibit 24 and explain how you arrive at the item "Proportion for Supervision, Stationery, Personal Injuries, &c., four and ninety-three hundredths per cent.," under subdivision "A?" A. That is the proportion that superintendence, personal injuries, stationery, and so forth, under Maintenance of Way of the Lehigh Valley Railroad, bear to the total Maintenance of Way expense of Lehigh Valley Railroad and, to that extent, that amount should apply on this expenditure on Perth Amboy terminal.

Q. That is an apportionment on the basis of other local expenses to total similar expenses of the system? A. Yes, sir.

Q. Under "B," Maintenance of Equipment, the item, "Proportion for Supervision, Shop Machinery, Tools, etc., six and thirty-one hundredths per cent.?" A. That is obtained in exactly the same way, except that it applies to the Maintenance of Equipment expenditure.

Q. Then under "C," Operation, "Proportion for General Supervision, two and forty-five hundredths per cent.?" A. That also applies, exactly the same way, with regard to transportation expenses.

Q. On subdivision "F" of the Exhibit, "Superintendence, Maintenance of Equipment Expense, on system basis, proportion six and thirty-one hundredths per cent.?" A. That is exactly the same percentage as was applied on statement "E," and was arrived at in exactly the same way.

Q. And the same is true of Proportion of General Office Expenses, two and seven-tenths per cent.," at the end of "F?" A. Yes, sir; and also of the two and thirty-nine hundredths per cent. on Superintendence, Transportation Expenses, just above that.

Q. "Superintendence, Transportation, Expenses proportion of two and thirty-nine hundredths per cent., $3916.54? A. Yes.

N. L. MOON, having been duly sworn, was examined as follows:—

By MR. FIELD:

Q. Your position with the Lehigh Valley Railroad is what? A. Superintendent of the Wyoming Division.

Q. Where does that division extend from? A. Penn Haven Junction to Sayre.

Q. Does that include any mining branches A. Yes; several.

Q. What branches? A. West Pittston Branch; Austin Branch; the Warrior Run Branch; the Miners Mills Branch; Mineral Spring Colliery Branch; Mill Hollow Branch; and sub branches leading off from the main branches to the collieries.

Q. Did you mention the one going to the Heidelberg? A. The one going to the Heidelberg leads off from the Mountain Cut-off freight tracks.

Q. What is the purpose of the Mountain Cut-off? A. It gives the company an easier grade over which to move its freight.

Q. Is it used exclusively for coal and other freight? A. Yes, sir.

Q. These mining branches which you have mentioned, including the West Pittston, the Austin and the Miners Mills Branches; are those used exclusively for coal transportation? A. All excepting the Miners Mills Branch.

Q. What exception is there there? A. There is a milling industry located at the end of that Branch.

Q. Would you look at sheet "F" of Exhibit 24 and state whether or not the item there of $1215 per mile for Maintenance of Tracks, Port Bowkley yard, was furnished from figures prepared by your office? A. Yes, sir.

Q. Does that correctly represent the cost per mile of maintaining yard tracks in your division? A. Yes, sir.

Q. And the same item as applied below to Coxton yards, $1215 per mile? A. Yes, sir.

Q. That represents the average cost of maintaining yard track in your division? A. Per mile per annum, yes.

Q. The item of $600 per mile per annum for maintaining ways and structures, Port Bowkley District; was that prepared in your offices? A. Yes, sir.

Q. What particular parts of the tracks are included in that item? A. Those are the tracks at the collieries, and the tracks leading to the collieries.

Q. In other words, the cost of maintaining mine branches in your division per mile per annum is $600? A. Yes, sir.

Q. What is the cost in your division per mile per annum of Maintenance of Ways and Structures, main line track? A. $1842.

Q. In this Exhibit, under subdivision "F" there is charged to Cost of Collecting Coal forty-five per cent. of the expense of maintaining seven and a half miles of main track between Port Bowkley and Coxton. Will you explain what coal it is that travels between Port Bowkley and Coxton and what empty cars go over that seven and a half miles? A. There are certain collieries located in the vicinity of Port Bowkley, where we have an assembling yard. The coal in that district is brought into the Port Bowkley yard and there placed on separate tracks, the coal going east or to tidewater being placed on certain tracks and the coal going west, through Coxton yard, being placed on other tracks. The coal going to tidewater is taken by the road engines at Port Bowkley as far as Pittston Junction, which covers a part of this seven and a half miles, and then over the Mountain Cut-off. The coal destined to western points is hauled over the entire seven and a half miles from Port Bowkley to Coxton yard, and it is a very conservative statement to say that forty-five per cent. of the traffic over those tracks consists of coal.

Q. Does any of the through freight traffic go over these particular tracks? A. No, sir.

Q. They are all switched off at the Mountain Cut-off and leave the main line west of this particular seven and a half miles? A. Yes, sir.

Q. Under the heading "Maintenance of Equipment," subdivision "F," Mr. Wilgus has taken as locomotive days three thousand one hundred and two days. Was that figure given to him by you? A. Yes.

Q. What does that represent? A. That is the number of ten-hour days worked by the engines in the mine service during one year.

Q. Under the same subdivision, under the heading "Repairs to Locomotives in Coxton Yard," Mr. Wilgus has used four thousand three hundred and thirty-seven days. Was that figure furnished by you? A. Yes, sir.

Q. What does that represent? A. It represents the number of ten-hour days worked by the engines in Coxton yard per year.

Q. Those are correct, from the records of your division? A. Yes, sir.

Q. Now, under the heading "Additional Crews, Port Bowkley to Coxton, 345 days at $35 per day, $12,075;" were those figures furnished by you? A. Yes, sir.

Q. Are they correct? A. Yes, sir.

Q. Do they represent expenditures made in your division? A. Yes, sir.

Q. Under engine house expenses, three thousand one hundred and two days; was that figure given by you? A. Yes, sir.

Q. Is the same figure as above in subdivision "B?" A. Yes, sir.

Q. Mr. Wilgus has taken as chargeable to coal forty-five per cent. of the expenses of the Coxton yard. Did you determine for him and tell him what percentage of the expenses in that yard were properly chargeable to coal? A. Yes, sir.

Q. How did you obtain that percentage of forty-five per cent.? A. By the number of cars passing through the yard, as well as the total weight of the cars.

Q. They are based on actual figures? A. Yes, sir

Q. And divided on a basis of what? A. I took the percentage of the coal cars, and cars containing coal and those containing freight, and the empty freight cars.

Q. You divided it on the basis of the number of cars? A. Yes, sir.

Q. Did you also furnish the figures below relating to wages of one assistant trainmaster, $1440; road foreman of engines, $1320; Port Bowkley yardmaster's force, $1680? A. Yes, sir.

Q. Are those correct expenditures in your division for that period? A. Yes, sir.

Q. Will you describe very briefly what service is performed as to coal at the Coxton yards. A The cars are received into the yard from the east and the west and are there separated—that is, empty cars—and inspected. Cars needing repairs are switched to the repair tracks and those that are in good order are taken to the mines by the mine engines, where they are loaded and returned to the yards for forwarding to tidewater or to Western points as the case may be, via the main line.

Q. In other words, for westbound cars is there a classification made at the Coxton yard as to destination? A. Westbound cars are classified for destination at the Coxton yard.

Q. And eastbound cars? A. Eastbound cars arriving at Coxton yard are not classified for destination; they are for direction. They are placed on separate tracks in the yard and taken from those tracks by the road crews.

Q. In other words, the Coxton yard is, as to certain collieries, an assembling point, is it not? A. Yes, sir.

Q. The coal from certain branches and collieries is assembled at Coxton? A. Yes, sir.

Q. So that two functions are performed there? A. It is an assembling yard and a classifying yard.

Q. Does all the coal from the West Pittston branch go to Coxton as an assembling yard? A. Yes, sir.

Q. The Austin Branch? A. All from the Austin Branch also.

Q. And from the Heidelberg colliery? A. Yes, sir.

Q. The Reliance and Seneca collieries? A. Yes sir.

Q. There is another assembling yard in your division, is there not? A. Yes, sir.

Q. And that is Port Bowkley? A. Port Bowkley.

Q. Just where is Port Bowkley located? A. It is located seven and a half miles east of Coxton, or about three miles west of Wilkes-Barre.

Q. What points assemble at Port Bowkley? What mines and spurs? A. Coal from Franklin, Mineral Spring, Prospect, Dorrance, Henry Washery; Miners Mills when it is operating.

Q. Warrior Run? A. That is taken to Port Bowkley, that is right. The coal is taken to Seneca for cleaning.

Q. Hillman Vein? A. No that does not go to Port Bowkley.

Q. By what department of your service is this assembling done? In other words, are there train crews and engines devoted exclusively to the gathering of coal? A. Yes, sir.

Q. Do you recall how many of those crews you have in connection with the Port Bowkley assembling? A. There are four at Port Bowkley.

Q. How many of these crews are there at Coxton performing the service there? A. Six.

Q. What does a train crew consist of, including the equipment? A. On several of the crews, the train crew consists of an engineer, a fireman, a conductor and three brakemen; and on two or three of the crews there are only two brakemen. That is in addition to the engine and a caboose.

Q. What, briefly, constitutes a day's work for these mine crews? A. The nature of the work or the time?

Q. The nature of the work. A. The crews in the Port Bowkley District have their headquarters at Wilkes-Barre shops. They are boarded out in the morning and go from that yard to Port Bowkley for their empty cars, which they take to the mines and place these empty cars on the empty car tracks above the breakers. These empty cars are dropped down through the breaker to be loaded, thence to the loaded car tracks below the breaker. The mine crews take the cars from the loaded car tracks below the breaker separating the coal for direction, and haul it from the collieries to the assembling yard at Port Bowkley.

That is practically the same movement as in the Coxton District.

Q. What preparation do the cars have before they go up to the mines, in the way of repairs, or tightening the cracks in the cars? A. The cars are gone over by the inspectors located at Coxton and Port Bowkley yards. They also examine the cars to ascertain whether there are any holes in them which might let the coal run out. If there are, they are patched. If the cars need minor repairs, such as can be done on the tracks on which they stand, on the receiving tracks in the yard, the cars are repaired there. Otherwise they are switched out and taken to the shop tracks for repairs.

Q. Does each car have to be prepared to receive the finest sizes of coal? A. Yes, sir; all cars have to be in condition to receive any size coal.

Q. In what way is your work rendered very expensive by cars condemned at the mines? A. When cars are loaded and dropped to the loaded tracks, they are gone over by the coal inspectors, who require a certain percentage of good coal before they will pass a car. There is quite a considerable percentage of cars loaded with coal that are condemned. These cars are switched out by the mine crews and, at the majority of the breakers, they are switched above the breaker on to the light car tracks, in order that they may be dropped to the pit, nearer the breaker, and the coal taken through the breaker for recleaning.

Q. What percentage, approximately, of the coal is condemned? A. Eighteen to twenty per cent.

Q. That varies widely, does it not, as to the different collieries? A. Yes, sir.

Q. In what way does the presence of "not billed" coal on the mine tracks interfere with your work and make it more expensive? A. The "not billed" coal has to be switched out and separated from the good coal, in the same manner as the condemned coal.

Q. All this switching at the mine is done against a heavy grade, is it not, a mountain grade? A. A heavy grade; yes, sir.

Q. Do you have any difficulty owing to the demand for particular sizes of cars at particular times? A. Not generally, but frequently we have to send certain kinds of cars to certain collieries, which causes some switching in the yard to separate the cars from the others.

Q. Is there any charge made for demurrage while these cars are detained at the mines? A. No, sir.

Q. Is it a fact that cars are detained at the mines? A. Oh, yes; for long times together, in some collieries.

Q. What is the effect of cold weather upon the expensiveness and difficulties of your service in gathering the coal? A. The movement of the cars is retarded by the cold weather and the engines do not steam so freely, and more over-time is earned by the crew.

Q. The output is as great from the mines in cold weather as in warm, if not greater is it not? A. Yes; usually greater.

Q. What difficulties do you have to contend with with regard to the mines shutting down without notice? A. It not infrequently occurs that some of the foreign element employed at the mines are celebrating a holiday, of which we have no notice, and we board our crews out as usual. When they get to the mine, there is no work for them, or only a part of a day, whereas, if we had had notice of the shutting down of the mines, we would keep our crews in and save the expense.

Q. In what way does the fact that there are a large number of sizes, or that there are different sizes of anthracite coal, affect the difficulty in your part of the work of handling the coal? A. With us the matter of sizes does not cut much of a figure. We do not classify for sizes, excepting occasionally. We often—sometimes—in the course of a year, there will be four or five times during the year we will get instructions to hold cars at Coxton yard. We have had as many as a thousand cars of coal held in the yard. Then when a demand for that coal, or for a portion of it, occurs, we will receive instructions to switch out or to forward, for instance, all

egg size, or possibly grate or chestnut, and of course we have to assign an engine, a special engine, and board out an extra crew, because the rgular work of the yard demands all of the time of the regular engines employed in it, and we have to switch out that coal and separate it from the other hold coal.

Q. The chief difficulty in relation to sizes arises at the destination, does it not? A. I understand so, yes, sir.

Q. Is it a fact that the demand for sizes varies? In other words, that the demand for any particular size is not even throughout the year? A. Yes, sir. In the Winter time there is a heavy demand for steam sizes, as well as the domestic sizes; but in the Summer time, the warmer weather, the demand is largely for the steam sizes of coal, there is not such a great demand for the domestic sizes.

(No cross examination.)

MR. PLATT:—We have no further witnesses to-day. I understand that Judge Campbell will go on with the Reading witnesses on Tuesday, the 18th. In the following week the Meeker case will go on, and after that we will wish to offer some further evidence.

Counsel for the Government, in order to have it appear in the record, state that they are ready to go ahead from day to day and at any time with the taking of proof by any one of the defendants.

At 1 P. M., adjourned until Tuesday, May 18th, 1909, 10.30 A. M., at Room 324, Post Office Building, Philadelphia, Pa.

(See pages 682-718 for meeting of May 18.)

Met pursuant to notice Tuesday, June 8th, 1909, at the Astor House, New York, at 10.30 A. M.

Present.—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. Hon. Adelbert Moot, representing certain defendants.

CONTINUATION OF TESTIMONY IN BEHALF OF THE ERIE RAILROAD COMPANY AND OTHER DEFENDANTS.

EDGAR GARTLEY, a witness called on behalf of the Erie Railroad Company, having been duly sworn, was examined and testified as follows:—

By JUDGE MOOT:

Q. What is your age, place of residence and occupation? A. My age is thirty-two; my residence is Plains, New Jersey; my occupation is weighmaster and colliery clerk at Delaware Colliery of the D. & H. Company, located at Hudson.

Q. That Delaware Colliery of the Delaware & Hudson Company is located where with reference to Scranton and Wilkes-Barre? A. Four miles north of Wilkes-Barre, and about fifteen miles south of Scranton.

Q. In what is called what coal region? A. The Wyoming Coal Region.

Q. Is it sometimes called the Lackawanna also? A. No, sir. It is the Wyoming Valley.

Q. Is this Delaware mine right in the center of the valley, or is it up on the hillside or mountain side, one way or the other? A. It is the easterly side of the valley, at the foot of the mountain.

Q. You have been in the mine. Do the mine workings run under the mountain or do they run rather under the valley? A. They run both ways.

Q. How long have you been connected with that mine? A. Since May 7th, 1902.

Q. Had you had any experience in mining, or have you

been connected with mining, any longer than that ? A. Yes, sir.

Q. How long? A. About seventeen years.

Q. Starting in in what capacity? A. Coal inspector.

Q. With what company? A. D. & H.

Q. You have always been employed by the D. & H.? A. All but about three years.

Q. Then you were with what company? A. The Natley Anthracite Company at Shamokin.

Q. What were you doing for that company? A. In the engineer corps; mining engineering.

Q. Connected with the mining? A. Yes, sir; mining engineering.

Q. Working in a subordinate capacity in the engineer corps? A. Yes.

Q. As mine clerk and weighmaster of this Delaware mine what are your duties? A. To look after the time, weighing of the coal, billing of the coal, and supplies.

Q. Do you keep any books? A. We have some books, yes, sir—time-books, royalty-books, and so forth.

Q. Your time-books are the books in which you keep the time of your men? A. Yes, sir.

Q. Your royalty-books are the books in which you keep accounts by which to determine the royalties payable to people from whom you hold land by lease? A. No. The royalty-books that we handle are to determine the number of cars that go from the different properties—that is, the miner's car.

Q. Is that because those miners' cars that go from the different properties carry coal into this mine from those properties on a royalty paid by your company? A. Yes, sir.

Q. So you keep the account to determine how much you pay in royalty to the owner of the land from which you take the coal? A. Yes, sir.

Q. Broadly and generally, has there been any change in the character of the accounts kept for the Delaware mine since you came to it, or have they been kept in the same way right through? A. There has been some change.

Q. What changes? A. When I first started with the Delaware we made out our pay-rolls at the mines. To-day they are made out at the Scranton office.

Q. They are made out at the Scranton office, but where do they get their data? A. They get it from us.

Q. You furnish the data and they do the clerical work? A. Yes, sir.

Q. That is the only change, in that respect? A. That is the only change in that respect. In regard to our stock, there is a change in that. We used to at one time take the bill and charge it right up. To-day we only charge up what is used.

Q. In other words, at one time, if you ordered mine props, all the mine props that came you charged up to the mine as quick as they came? A. Yes, sir.

Q. Whether they were used or not? A. Yes, sir.

Q. And when the mine props come they are not charged up to the mine until they are used? A. Yes, sir.

Q. And as they are used they are charged up? A. Yes, sir.

Q. Are there any other differences that you can think of in the keeping of the mine accounts that you keep as the colliery clerk? A. No, sir.

Q. About when were these changes made in keeping the mine accounts? A. In about 1904 or 1905. I am not quite sure. The pay-roll change was made in 1903.

Q. Have you been requested to go over the mine accounts and statistics and statements of your mine for some time with the view of verifying a statement as to the mine cost of producing coal in it? A. Yes, sir.

Q. Have you done it? A. Yes, sir.

Q. Have you got a statement with you showing in detail the mine cost of producing coal in that mine? A. Yes, sir.

Q. Is it correct? A. To the best of my knowledge, it is.

Q. You verified it from these figures kept by yourself as mining clerk? A. Yes, sir.

Q. You found it to be correct by that verification? A. Yes, sir.

Q. Will you produce that detailed statement?

(Witness produces statement.)

Q. This statement you produce is a detailed statement of expenses for the year 1908 of the Delaware mine? A. Yes, sir.

Q. It shows how you keep the expenses of mining coal at that mine in detail? A. Yes, sir.

Q. At the bottom of this statement I find a general heading, "General Expenses," and below the general headings "Maintenance of Mine and Structures" and "Maintenance of Equipment" and "Operating Expenses." Do you keep that general expense part yourself? A. No, sir.

Q. That is kept in your office? A. That is supplied by the New York and Scranton offices.

Q. Then, when you speak of verifying this statement, that part of this statement, I infer you do not undertake to say you verified? A. No; not that part.

Q. All that you know about that part is that it was put in by either the New York or the Scranton office? A. Yes, sir.

Q. So far as you know it is correct, but you do not pretend to know absolutely whether it is correct or not? A. I do not know anything at all about it.

Q. On the other side of the sheet, under "Summary," under "Credits," I see a credit of $4240.82, under "Supplies and Material," in the column headed "Disbursements." Do you know anything about that personally or don't you? A. The teaming that we do for other mines and scrap iron sold.

Q. That is a credit for teaming done for other mines of the Delaware and Hudson Company? A. And delivering of coal.

Q. Do you know how that is got at personally? A. We charge for our team forty cents an hour.

Q. What is the general charge for teams up there—outside teams? A. About fifty cents an hour, I believe.

Q. Do you know how that charge of forty cents an hour is arrived at that you make to other mines of your own company when you send your team to that mine? A. No; only through orders from the office. We got orders to charge forty cents an hour.

Q. This seems to be a credit. Does that mean, then, this item of $4240.82 credit for supplies and material, that the teams connected with your mine did teaming for other mines of your company that resulted in an apparent profit of $4240.82 that is to be credited to that mine as between it and the other mine? A. From the other mine and from the sales department.

Q. So this goes to keeping an account between your own mine and the other mine? A. Yes, sir.

Q. If you do any laboring or use any other means of making any profit in that way, your mine gets the credit of it? A. Yes, sir.

Q. And it is charged up to the other mine? A. To the other mine.

Q. This statement, I see, shows down in the "Time Statement," "Number of Working Days in Year, 314;" "Number of Days Worked by Colliery, 149 1-9;" "Number of Working Days Colliery was Idle, 164 8-9;" "Causes of Idle Time, Breakdowns, &c., 10 2-9;" "Short of R. R. Cars, 1 day; Short of Coal, 81 7-9 days; Repairs, 2 days; Holidays, 5 6-9 days; General Orders, 55 3-9 days; Labor Days, 2; Short of Men, 4 5-9 days; % Water, 2 3-9; Number of Breaker Starts, 288 days." These, I assume, are all founded on your own entries of time? A. Yes, sir; on our daily reports.

Q. Do you know how that time account for that mine for the year 1908 compares with the time account of that mine for years before or for this year so far as it has gone? A. For this year as far as it has gone, it is about the same. It is gradually decreasing on account of the mines continually decreasing, too.

Q. This is a mine that is running out? A. Yes, sir; it is a mine that is running out.

Q. It is an old mine? A. Yes, sir.

Q. How long has it been worked? A. It will be twenty-one years the nineteenth of next August—twenty-one or twenty-two years.

Q. This "Short of coal," which seems to be the biggest item of all, means that you did not have coal to take out? A. The miners did not make coal to keep the breaker going.

Q. Did not have enough to keep the breaker running? A. Did not have enough miners to keep the breaker running. That is the trouble. They haven't got room enough to put the miners in to keep the breaker running.

Q. What vein is it you are mining in that mine? A. We mine the Cooper, Bennett and Ross veins.

Q. The Cooper vein, how much of a vein is that? A. I should judge about seven or eight feet.

Q. Have you got the Cooper vein in that mine to mine yet? A. We are robbing it. We are robbing the pillars.

Q. Those pillars, what are they—large or small pillars? A. Some very small and some medium pillars; none very large.

Q. They are old pillars? A. Yes, sir.

Q. Do you have any trouble with squeezes, or anything of that kind, in robbing them? A. We have had.

Q. The Bennett. How much of a mine is that? A. That is about the same as the Cooper.

Q. Six or seven feet? A. Yes, sir.

Q. Have you got any in that vein except where you are robbing the pillars? A. Not that I know of.

Q. You mentioned the Ross vein. How much of a vein is that? A. From thirty to forty inches.

Q. What is that—robbing pillars, too? A. No; that is mining.

Q. How long has it been mining the Ross vein? A. About eight or ten years, I should judge.

Q. Where is that vein—at the top of the mine or down at the bottom? A. That is the bottom.

Q. Underlying all? A. That is the underlying vein that we have yet.

Q. Do you know whether there are any other veins

below that or not? A. We are sinking for a vein now, for a Red Ash vein.

Q. Do you know whether that vein exists there, whether there have been any borings? A. There have been borings to it.

Q. How much do they show, do you know? A. I don't know.

Q. You are sinking a shaft for it? A. We are sinking a shaft and a slope. We haven't got the shaft started yet. The slope is started.

Q. There has been considerable said about a slope and a shaft. We know that a shaft goes down vertically. That is right, is it? A. Yes, sir.

Q. How does a slope differ from a shaft? A. It is at an angle.

Q. It runs obliquely? A. Yes, sir.

Q. From one vein to a lower vein, ordinarily? A. The vein is leading to what we call a pitch. It runs down through the veins, the slope.

Q. So, instead of raising the coal up directly, it comes up an inclined plane? A. Yes, sir.

Q. On rails? Is that right? A. Yes, sir.

Q. I see here under "Detailed Statement of Extraordinary Expenses," "No. 7, Slope, $1940.21" for the season. That was for running some such slope? A. Yes, sir. The present rock slope, the Red Ash slope that we are sinking for a Red Ash vein, that was started last December. That is what it cost for the month of December?

Q. That much for the month of December? A. I don't think it was started before December. I am not sure. It may have been started in November.

Q. This other large item for being shut down is "General Orders," and "Labor Days," "57 3-9 days." Do you know what the nature of those general orders were—what that means? Stopped for want of coal or miners, or what? A. No; they are orders we got from the office.

Q. Of what general nature? A. Curtailing of time.

Q. Explain what you mean by that? A. Curtailing of time, shorter hours and idle days for some reason or another—they would give us orders to be idle.

Q. Do you know what time last year those orders came? Can you remember generally and broadly when most of them came? A. Some around the 4th of July and some around Christmas time. I don't know just how many then. When the others came, I couldn't say just exactly when they were.

Q. How was last year as compared to the year before or the year before that as to being a lively or a dull year? A. Last year was more of a dull year than it had been previously.

Q. How is it as to these general orders, as to whether they come in the lively years or the dull years? A. They come about the same.

Q. Do you know anything about what causes them? A. No, sir.

(Judge Moot offers in evidence statement headed, "Detailed Statement of Expenses for the Year 1908," marked "Erie Exhibit No. 1, 6-8-09, C. H. G.")

Q. You have a general statement there, a much smaller one, with this very short. Will you please produce that?

(Witness produces statement.)

Q. This statement you now produce for 1908 shows the tonnage of the different sizes of coal, the total tonnage, the cost of production, and the average mine price at tidewater basis? A. Yes, sir.

Q. The tonnage, I take it, is from your own figures? A. Yes, sir.

Q. As mine clerk? A. Yes, sir.

Q. The percentage of production is simply a division of the tonnage on the basis of relative percentages of the entire tonnage? A. Yes, sir.

Q. The cost per ton of production is the figure shown on the statement marked "Erie Exhibit No. 1," just put in evidence, that you have already explained? A. Yes, sir.

Q. The average mine price at tidewater basis, what do you know about that? A. That is taken from the Ruley average.

Q. That is furnished you from the Ruley average? A. Yes, sir.

Q. Who furnished it to you—your company? A. Yes, sir.

Q. Have you got the paper, or whatever it is, with you? A. How they figure it out?

Q. Yes. A. Yes, sir.

Q. Please let me see it.

(Paper produced by the witness.)

Q. This paper that you produce to explain the average mine price at tidewater basis shows "Prepared sizes, for sizes above Pea, sixty-five per cent. of the Ruley average at tidewater?" A. Yes, sir.

Q. Pea coal, it shows fifty per cent. of the Ruley average at tidewater, when said price is two dollars and fifty cents per ton, or less, and for each advance of ten cents per ton in the Ruley price above two dollars and fifty cents, the proportion is increased one per cent. until the percentage paid for Pea reaches sixty-five per cent? A. Yes, sir.

Q. For Buckwheat No. 1, it shows that forty per cent. of the Ruley tidewater average for that size is taken when said price is two dollars per ton, or less, and for each advance of ten cents per ton in the Ruley tidewater price, the proportion is increased two per cent. until the Ruley price for Buckwheat reaches two dollars and fifty cents, after which the proportion advances one per cent. for each ten cents advance, the same as for Pea? A. Yes, sir.

Q. Sizes smaller than Buckwheat No. 1, it shows twenty-five cents per ton at the mines when the Ruley price at tidewater is one dollar and thirty cents; or less; for each ten cents increase in the Ruley price at tidewater, the price at mines is increased five cents? A. Yes, sir.

Q. The note on this paper shows that in arriving at mine price of Birdseye, the average price at mines for Buck. #2 and Buck. #3 is taken in a proportion of fifty per cent. for each size composing Birdseye? A. Yes, sir.

Q. What is "Birdseye?" A. It is Buckwheat No. 2 and Buckwheat No. 3, and some collieries call it Buckwheat No. 2 and Rice coal.

Q. I see under "Birdseye" here no tonnage whatever is given for 1908. A. No, sir.

Q. Why was that? A. We burned it at the colliery for fuel purposes. None shipped.

Q. When you burned that Birdseye at the colliery for fuel purposes and none was shipped, how did that appear in this Exhibit No. 1 that has been put in evidence showing the details? Where does it appear on that? A. It don't appear, I don't believe.

Q. Do you know whether that is considered or figured in expenses or anything else in this statement? A. Only the expenses of handling it; that is all.

Q. It gets into the labor items? A. Yes, sir.

Q. Do you know whether there is any charge of credit one way or the other on a royalty basis for it in that? A. I think not; no.

Q. You think it just appears simply in the labor item? A. That is all.

Q. It is treated as a waste, in other words? A. Yes, sir; it is treated as waste. It has been.

Q. That was so done to the end of 1908. Are you making any Birdseye in that mine now? A. Yes, sir.

Q. Much? A. No; not much. About one per cent. Somewhere about one per cent, I should judge, of the production.

Q. I observe in looking at these percentages of tonnage produced, that the percentage of Pea is seventeen and eleven one-hundredths, and the percentage of Buckwheat is ten and twenty one-hundredths, making a total of twenty-seven and thirty-one one-hundredths of Pea and smaller, which apparently is a small percentage of the steam sizes? A. Yes, sir.

Q. How do you account for the fact that your mine last year produced so small a percentage of the steam sizes? A. That is a general production. They did not produce

very much steam sizes. That is the reason we had to burn Birdseye.

Q. Is your coal in that mine pretty free from impurities, or is it coal that has a good many impurities in it? A. Quite a few impurities.

Q. How old is your breaker at that mine? A. Twenty-one or twenty-two years of age.

Q. Is it a modern breaker? A. It has been fixed up a little and modernized, but it is not a modern breaker by any means.

Q. How is it as to whether you can handle coal in that breaker as cheap as you could in a more modern breaker in breaking it and preparing it for market? A. I think it is handled as cheap in that breaker as it is in any of the modern breakers.

Q. Why? What makes you think so? A. Because we do not employ very many men, in the first place, and, of course, if we had dirtier veins they would have to modernize the breaker to clean it.

Q. But as these veins run fairly pure you think they are doing as well as they could with a more modern breaker? A. Yes, sir; at the present time. That is, with the small amount of coal we are handling. If we had to rush the breaker, we could not clean it.

Q. A production of ninety-four thousand and five hundred and seven one-hundredths tons in the year 1908, you consider a small production up there, do you? A. Yes, sir; to what it has been heretofore.

Q. You did just about as well as it can be done? A. Yes, sir.

Q. How large a production has this mine had previously? A. I couldn't say.

Q. How large is the largest it has had since you were there? A. About one hundred and twenty thousand.

Q. That was back in what year? A. 1904—1904 or 1905.

Q. How is it as to whether the coal is more expensive to produce as the production goes down or less expen-

sive? How is that? Is there any effect on it? A. The coal is getting further away from the breaker continuously.

Q. Does that make it more expensive to produce? A. Yes, sir; it makes it more expensive to produce on account of making it a further haulage.

Q. What kind of haulage do you have in this mine? A. Mules.

Q. Would it pay to put an electric haulage in this mine? A. I guess it would. They are going to put it in.

Q. Have you any idea how long this mine will last if you do not get a Red Ash vein you are putting this slope in to get? A. No; I have no idea.

Q. Last some years yet? A. Yes; last some years.

Q. You haven't any idea of what proportion of that Ross vein is mined out yet? A. No; I have not.

Q. Or of what proportion you have robbed of these pillars? A. Of the Bennett and Cooper?

Q. Yes. A. Practically pretty near all robbed out.

Q. You have got those pretty nearly all robbed out? A. Yes, sir.

Q. So that this mine is practically now reduced to what you can get out of the Ross vein, from thirty to forty inches thick, and what you may discover as to a Red Ash vein when you get your slope down? A. Yes, sir.

Q. Do you know anything about these average prices except what this paper you have produced here tells you? A. No, sir.

Q. Do you have anything to do with the prices? A. No, sir.

Q. You speak of billing this coal. Where do you get your orders? How do you tell where to bill it to? A. We bill it to Carbondale, most of it, and they re-bill it from there.

Q. That is all that your billing is, just to bill it to Carbondale? A. To Carbondale, and to the Susquehanna Coal Company, and then they re-bill it. We know nothing about it other than that.

Q. What concern do you bill it to at Carbondale? A.

To the Delaware and Hudson Company, sales department.

Q. Do you have anything to do with the sales department? A. No, sir.

Q. You are just confined to this mining department? A. Yes, sir.

Q. Do you have anything to do with the Transportation Department? A. No, sir.

Q. You just make these bills, from which these trainmen can tell where to move the coal? A. And they give us a receipt for the coal.

Q. So, if anything happens it can be traced? A. We can trace it up and charge it to them.

Judge Moot offers in evidence statement headed, "Delaware Mine, Year 1908," marked "Erie Exhibit No. 2, 6-8-09, C. H. G."

Cross examination.

By MR. MCREYNOLDS:

Q. This statement shows that the number of working days in the year 1908 was 314, and that this Delaware Colliery was operated one hundred and forty-nine and one-ninth days, or something less than half of the time? A. Yes.

Q. Is the expense of the output of a mine decreased or increased by operating it only half the time? A. It is increased. That is, the breaker. The inside mines work more than that. They work about full time. The breaker works about four or five hours.

Q. What is this time statement on this exhibit that has been put in evidence here? Is that for the breaker or for the mine? A. Breaker.

Q. You have put down here under the head "Causes of Idle Time," "General Orders, 55 3-9 Days." What do you understand to be the meaning of that "General Orders?" A. Those orders come from the office to lie idle.

Q. Why are those orders sent out to the mine to lie idle? A. For holidays.

Q. You have got holidays down here under a separate item? A. Extra holidays. They are holidays around—if we would have a holiday on the 4th of July, maybe we would have four or five days for the men to sober up afterwards, and they would give us time for the men to sober up, to lie idle.

Q. That don't take fifty-five days out of the year? A. Then, there are general orders—I don't know why they give out general orders.

Q. Are those general orders sent out in order to reduce the amount of coal you send out? A. I don't know why.

Q. Is that your general understanding of it? A. No.

Q. Do all the men in your mine suspend the same days? A. Sometimes, and sometimes they do not. We were idle for repairs in 1908.

Q. That is put down here under a separate item, "Idle for Repairs." I am speaking now only of days when you were idle under general orders. You have got down in this statement idle for repairs, two days? A. That was repairs that we laid idle ourselves for. But we had general orders to lie idle for repairs, too.

Q. Who issues those general orders for you to lie idle? A. The Scranton office, I guess.

Q. How does the Scranton office know when you should lie idle? A. For repairs?

Q. No. I mean for any reason concerning which they issue general orders? A. I don't know.

Q. You just receive from headquarters at Scranton an order to lie idle? A. Yes.

Q. Then what becomes of your men? A. They don't work.

Q. So you get, for some reason that you don't understand at all, a general order to lie idle, and therefore you say to all your men, "You are idle to-morrow?" A. Yes.

Q. Don't you know that those general orders to lie idle, as a rule, are sent out for the purpose of reducing the total amount of your output? A. No, sir.

Q. What? A. I don't know that that is the reason.

Q. That is the result of it, is it not? A. That is the result of it.

Q. As a general rule, those general orders apply to all the mines in that same section? A. For the Delaware and Hudson Company.

Q. Any other companies as well? A. I don't know anything about the other companies.

Q. Don't you know when you are idle by general orders the other mines in the Lackawanna region operated by other companies are also idle? A. No, sir; I do not.

Q. Do you know whether that is so or whether it is not? A. I know it is not true.

Q. Are you, under general orders, idle about the same number of days during the year that the other collieries in that section are idle? A. No, sir; we are not.

Q. What proportion of your total capacity did you undertake to produce during the year 1908? A. As much as possible, I guess, as far as I know.

Q. Then, why were you idle more than half the time, if you were trying to produce as much as possible? Can you explain that? A. It looks as though it was a curtailing of production.

Q. There is no question about it, is there, that these general orders were sent out for the purpose of curtailing the production of your mine? There is no doubt about that, is there? A. No.

Q. How much coal could you have produced at this mine in 1908 if you had worked it to its capacity? A. About one hundred thousand tons, I should judge.

Q. You produced ninety-four thousand tons and only worked half the time? A. The mine worked practically all the time. The miners were in the mines after we received general orders, filling up the cars, if you understand it, and then they could not keep the breaker running full time. They had several miners in the mines every day that we were idle.

Q. Several? A. Several of them. Very near all of them. We only have about sixty miners altogether.

Q. You think the total output of this mine if it had

been worked to its full capacity would only have been about one hundred thousand tons? A. I only think it would have been about one hundred thousand, yes.

Q. You say you bill this coal to the Sales Department of the Delaware and Hudson Railroad? A. Yes, sir; the Delaware and Hudson Company.

Q. At Carbondale? A. At Carbondale.

Q. Where does it go from Carbondale? A. I don't know.

Q. You do not know where this coal finally finds a market? A. No, sir.

Q. Do you bill it at the mine weights? A. Weighed on our scales.

Q. At the mines? A. Yes.

Q. Have you anybody to inspect it there? A. Yes; we have a coal inspector.

Q. Company inspector? A. Sales Department inspector.

Q. After it reaches Carbondale you do not know what becomes of it? A. I do not know what becomes of it.

Q. Do you bill out this coal at its actual weights, as shown on the scales? A. On the gross ton, yes, sir.

Q. That is, if it is a fraction of a ton you cut that out? A. No, sir. If it is twenty-two tons and ten hundredweight, it is billed as twenty-two tons and ten hundredweight.

Q. Suppose it is twenty-two tons and ten hundredweight and fifty pounds? A. Then we call it ten hundredweight.

Q. In other words, you bill it out on even hundreds? A. Yes, sir.

Q. The hundred that is lowest or nearest you use? A. The lowest. We allow on each car anyway two hundred pounds for the man and leakage that would be spilled in bumping—two hundredweight.

Q. You keep the royalty books, too? A. Yes.

Q. Upon what basis do you pay royalties? A. I do not know anything in regard to the paying of it. We receive the tonnage and it is figured in the office.

Q. What tonnage do you report upon —— A. In the cars. We do not pay by the ton—that is, the miner. The miner is paid by the cars at our colliery.

Q. How is the royalty figured? Upon all sizes or only part of the sizes? A. I couldn't say.

Q. How far is this Delaware mine from Carbondale? A. I do not know just what the mileage is to Carbondale. I located it about fifteen miles south of Scranton, but I do not know what the distance from Scranton to Carbondale is.

Q. Are there other Delaware mines in that region? A. Delaware and Hudson mines; yes.

Q. How far is this mine from Pittston? A. About four miles, southerly.

Q. Are you acquainted with the mining district around about Carbondale? A. No, sir.

Q. You deliver or bill a good deal of the coal from this mine to the Susquehanna Coal Company? A. Some. Not very much.

Q. At what point is that coal delivered to the Susquehanna Coal Company? A. South Wilkes-Barre, I believe.

Q. Then where does it go? A. I don't know.

Q. What do you do with the bills that you make out? A. I give them to the railroad department to carry the car.

Q. Do you keep account yourself of what is delivered to the Susquehanna Coal Company? A. No, sir.

Q. You have got nothing except the railroad receipts? A. That is all.

Q. What do you do with them at the end of the month? A. The receipts? We retain them.

Q. They are not sent into the head office? A. No, sir.

Q. You do not know how the accounts between this colliery and the Susquehanna Coal Company are made out? A. No, sir.

Q. How do you know whether to send your coals to the Susquehanna Coal Company or to Carbondale? A. We got orders from the Sales Department at Carbondale.

Q. You have been asked about the substance of the paper

entitled, "Basis of Arriving At Prices At Mines From The Tidewater Averages Furnished by Mr. W. W. Ruley." Where did you get this paper? A. The Scranton office.

Re-direct examination.

By JUDGE MOOT:

Q. I wish you would tell us a little more about this weighing. Suppose a car weighs twenty-two thousand, one hundredweight and seventy pounds. At what weight is that car put into the bill of the billing of that car? A. That is, the car?

Q. The car, without any coal. A. Twenty-two thousand two hundred.

Q. It is put in at thirty pounds more than the weight shown? A. Yes.

Q. Suppose it only weights twenty-two thousand, one hundredweight and ten pounds? A. It is called one hundred.

Q. Suppose it weighs twenty-two thousand, one hundredweight and forty pounds? A. Called one hundred.

Q. Suppose it weights twenty-two thousand, one hundredweight and fifty pounds? A. Called two hundred.

Q. It is called twenty-two thousand, two hundredweight at anything at fifty pounds or above? A. Yes, sir.

Q. And twenty-two thousand, one hundredweight at anything below fifty pounds? A. Yes, sir.

Q. Suppose your man on the car, the brakeman who is handling it, in fact only weighs one hundred and fifty pounds or one hundred and forty pounds. What is he put in at? A. Two hundred pounds.

Q. Anyway? A. Anyway. That allows for spilling.

Q. So that generally the man is weighed at something more than he does weigh? A. Yes, sir.

Q. The coal. Suppose when your car is loaded the figures would show that there was only thirty thousand, one hundredweight and seventy pounds of coal on there. What would your bill show? A. Thirty thousand one hundred,

with the exception of the two hundred. It would be twenty-nine thousand, nine hundred.

Q. Suppose it got up to thirty-one thousand, one hundredweight and ninety pounds of coal. What would it be billed at? A. Twenty-nine thousand nine hundred.

Q. You always throw out the extra pounds of coal? A. Yes, sir.

Q. And you always take out the two hundred pounds for a man? A. Yes, sir.

Q. Do you make any other allowances in the weighing in any other way on the car? A. If there was no man on the car we would allow one hundred pounds.

Q. If there was no man you would allow one hundred pounds for what? A. For spilling, going down the branches.

Q. Suppose the car was very wet, from snow or rain or from having just been prepared at some washery, where a great deal of water had to be used? A. I don't know anything about that. We haven't had those experiences at that mine.

Q. So you do not know anything about that? A. I do not know anything about that; no, sir.

Q. Do you know whether this system of weighing that you practice at this mine is practiced generally or not? A. Yes, sir; so far as I know, it is a general practice.

Q. What about whether at the other mines of the Delaware and Hudson Company in your neighborhood the other breakers were still on the same days that your breakers were still in 1908? I couldn't say. I don't know.

Q. How about the breakers in the mines of other companies than the Delaware and Hudson Company as to whether they were still when you were still? A. Some days they were still when we were still, and some days they were idle when we were working, and they were working when we were idle.

Q. How about whether the mines generally are still on the same holidays in the same neighborhood? A. Some are and some are not. Holy days—we have many

foreigners there and they have days of their own, and we have different classes, and all the different men have different days.

Q. It depends on whether your miners are Hungarians or some other nationality, and whether they are Protestants or Romanists, and all those things enter into the question of what Holy days shall be observed or shall not? A. Yes, sir.

Q. Are there many Holy days observed up there? A. Quite a few.

Q. Do you have any idea how many you have to observe at your mine? A. I do not, no.

Q. Can you give us an estimate or give us any idea how many days you were idle there for Holy days and holidays? A. I have never given it a thought. I should judge it would be from ten to fifteen days outside of the regular holidays up there.

Q. The regular American holidays you mean? A. Yes, sir; the regular American holidays—the legal days.

Q. If I understand you correctly, you say in the mine itself, the actual taking out of coal, was in operation substantially the whole time? A. Pretty nearly, yes, sir.

Q. What time would you take out of that? What time can you say it was not in operation—the mine itself? A. I could not hardly say.

Q. Would it be running Christmas, for instance? A. No; it would not be running on Christmas.

Q. Would it be running on the 4th of July? A. No; nor Labor day, or February 22d.

Q. Washington's birthday? A. Yes.

Q. How about Lincoln's birthday? Does that count? A. We worked in 1908.

Q. The mine did? A. The mines did. The breaker worked that day.

Q. How about Decoration day? A. We were idle.

Q. The mine and all? A. Yes, sir.

Q. You do not have Columbus day up there yet? A. No; not yet.

Q. Have you many Italians there? A. No; we have

not. They have Columbus day at the colliery above. It is an individual concern, and I know they are idle.

Q. How about Thanksgiving? A. Idle.

Q. Mine and all? A. Yes, sir.

Q. How about Sundays? They are all idle that time? A. All idle. And these regular Holy days. Of course, the mine is idle those days.

Q. Those are the ones you had in mind when you said ten or fifteen days, anyway? A. Yes.

Q. Are those independent of these American holidays I have now been naming? A. Yes.

Q. At Christmas time, how much of the time do you lie idle? Just simply Christmas day, or more than that? A. It depends on when Christmas day falls.

Q. Illustrate? A. If it comes in the middle of the week, we generally only lie idle on Christmas day. If it comes on Friday, we will lie idle Friday and Saturday. If it comes on Tuesday, we would lie idle Sunday, Monday and Tuesday.

Q. How is that answer as to the 4th of July and other American holidays? A. The same.

Q. It seems that your breaker only ran a little less than half the actual working days? A. Yes.

Q. While you had your mine running practically the entire time? A. Yes, sir.

Q. Is your breaker run by steam? A. Yes, sir.

Q. Has machinery? A. Yes, sir.

Q. And it has about how many men in it? A. About twenty-nine—twenty-eight or twenty-nine.

Q. Suppose you ran your breaker the whole time instead of about half the time, would that add to the expense of preparing the coal or decrease the expense? A. It would add to the expense.

Q. Much? A. About double up. That is, double the preparation.

Q. Double the expense of preparation? That is what I mean. A. Yes.

Q. Here under "Operating Expenses" I find, "Han-

dling," "Cleaning," "Culm." Are those breaker items of expense ? A. Yes, sir.

Q. Are there any other breaker items of expense under "Operating Expenses?" A. Some in "Superintendence." That is all.

Q. Not any "Supplies?" A. There may be some supplies come into the breaker, yes.

Q. No "Injuries to Persons?" A. We haven't had any.

Q. So there would not be any in that? A. No.

Q. Is your mine connected by telephone with the office at Scranton? A. Yes, sir.

Q. Suppose a breakdown occurs in your mine, what do you do? A. Notify Scranton.

Q. You do not handle it on your own initiative, but you notify Scranton? A. Notify Scranton unless it is a slight breakdown that we can repair in a couple of hours.

Q. If it is a breakdown of any significance you notify Scranton? A. Yes, sir.

Q. And notify the superintendent of the mining department at Scranton, or whom? A. The auditor's office, and the superintendent's office. Both offices—and the division foreman's office.

Q. You notify them all by telephone? A. Yes, sir.

Q. At once? A. Yes, sir.

Q. Is that a regular course of business? A. Yes, sir.

Q. And has been for how many years? A. Since I have been at the Delaware.

Q. And after you notify them that way at once, then what happens? A. Then we start to repair, but they generally give us orders what to do.

Q. When you get those orders, would those orders be what you call "General Orders" here? A. Yes, sir; some.

Q. Not all the "General Orders" would be of that character? A. No, sir.

Q. But some of the "General Orders" would be of that character? A. Yes, sir.

Q. What other character of orders would come under that heading, "General Orders?" A. Any order to lie idle.

Q. What other things besides a breakdown would result

in a report to the office that would draw an order to lie idle? A. I could not say.

Q. Suppose your miners struck a fault in this Ross vein you are mining, so that they got out very little coal, what would you do? Would you run the breaker just the same, or would you report that to the general office, or would you just take the responsibility of shutting down the breaker? How would you handle that? A. We would take it on ourselves.

Q. You would take it on your own hands to shut down the breaker? A. As soon as we got the coal out that was already loaded and shipped away.

Q. When you say, "Short of coal" here, that meant there was nothing else, in fact to take the responsibility? A. Yes, sir.

Q. That item of eighty-one days means —— A. That the breaker ran for four hours or five hours, and the rest of the time goes in as short of coal, out of a nine-hour day.

Q. Although the miners were down in the mine working all the time? A. Yes, sir.

Q. How about whether you could have more miners working profitably in that mine than you had working there in 1908? A. There was not room for them. The gangways, and so forth, are so hard to drive to keep ahead of the chambers, where the miners work that mine the coal, that they could not keep ahead of the miners, and if we could have had more miners for the same hours that they ran, we could have produced the coal cheaper, but the inside is where the expense is.

Q. In other words, your vein is from thirty to forty inches thick? A. Yes, sir.

Q. And to get out that thirty or forty inches you have to take out a lot of rock and what you call "dead work?" A. Yes, sir.

Q. And that requires a lot of men to do that work so that the coal can be taken out? A. Yes, sir.

Q. You did not have enough gangways made to take out that coal, you say, so you could work more men than you did? A. No.

Q. Except that you think you might have taken out about one hundred thousand tons instead of the ninety-four thousand five hundred tons you did, if you had driven the mine full time with men all the time? A. Yes, sir.

Q. That you think would be the extent of the increase you could have made? A. I think that is about all.

Q. What difference would that have made in the cost of producing this coal, if you produced the six thousand tons more? Would it cut it down a little? A. It would have cut it down a little; yes, sir.

Q. You could not give us any idea of that, I suppose? A. No, sir.

Q. As near as you can tell, these details here will give us as good an idea to work it out as anybody can? A. Yes, sir. Take the two totals here and divide by one hundred thousand instead of ninety-four thousand five hundred, and you get it.

Q. To get that one hundred thousand tons would you have to work any more men? A. Not outside.

Q. Not outside? A. Nor inside, I do not think. A few more miners.

Q. That would be some more wages? A. Yes, sir.

Q. That is all? A. Yes, sir.

Q. It would be the wages of those additional miners? A. Yes, sir.

Q. Can you give us any idea how many additional miners it would have taken to produce one hundred thousand tons instead of ninety-four thousand? A. It would not have taken any if we could have worked all the time.

Q. If you had worked fuller time, it would not have taken any? A. It would not have taken any, no, sir.

Q. You are not superintendent at the mine? A. No, sir.

Q. Do you know, keeping these statistics, and all that, whether there is any attempt made to produce this coal as cheap as it can be produced? A. Yes, sir.

Q. What is the fact about that? A. Everything is tried to keep the cost down on everything possible, and we try to rush the coal through the breakers as fast as we possibly can to keep the cost down.

Q. Why? A. Because we do not want to have any more cost than we can.

Q. In other words, you want to make as much money out of mining as you possibly can? A. Yes, sir.

Q. That is what you are there for? A. Yes, sir. It is not profitable to have it high cost.

Q. Have you any idea how these expenses for the year 1908 compare with the years before that, or if they compare just about the same or whether it is increasing a little all the while? A. I have not paid very strict attention to that.

WILLIAM D. RUSSELL, a witness called on behalf of the Erie Railroad Company, having been duly sworn, was examined and testified as follows:—

By JUDGE MOOT:

Q. What is your age, occupation, and place of residence? A. My age is sixty-three; my occupation is clerk in the Coal Mining Department of the Delaware and Hudson Company; my residence is in the city of Scranton.

Q. How long have you been connected with the Delaware and Hudson Company, in the Coal Mining Department? A. To be exact, since the 3d of April, 1867.

Q. Right there at Scranton? A. No. In Carbondale and Scranton.

Q. Most of the time in Scranton? A. Yes.

Q. What has been the general nature and character of your duties say for the last twenty years? A. Accounting in the general office of the Coal Mining Department.

Q. Did you have anything to do with getting up the exhibits of the Delaware and Hudson Company in connection with the Hearst case during the presidency of Mr. Wilcox? A. I did.

Q. You had to do with preparing exhibits for the Delaware and Hudson Company at that time to show generally what? A. The cost of producing coal.

Q. Mining it? A. The cost of mining, yes, sir; mining and preparing and putting in cars.

Q. More than merely mining? Mining and producing? A. Yes, sir; the general cost until it is loaded into the car.

Q. Have you, at the instance of the officials of your company, recently taken up the exhibits prepared by you for the Hearst case for the purpose of carrying on an investigation to a later period of time? A. I have.

Q. You have brought down the cost of mining and producing coal to what time? A. Down to the close of 1908.

Q. So that this printed matter I show you, headed on page 17, "Hearst Exhibits Cost Per Ton of Producing Fresh Mined Coal of The Delaware and Hudson Company for the Years 1890-1899," by months, and then the detailed statement, "Cost of Producing Fresh Mined Coal—January, 1900-1904," running along on pages 18 to 30, inclusive, and then this typewritten statement you have just been examining, marked "Erie Exhibit No. 6," going into details starting in with October, 1904, where the printed statement ends, and running on through from October, 1904, to the end of December, 1908, and then giving a summary for the years 1904, 1905, 1906, 1907 and 1908, or totals, would make a statement for the Delaware and Hudson Company showing a summary of the cost of producing fresh mined coal from 1890 down to January 1st, 1909? A. It would, yes, sir.

Q. And it would show the details of the cost of producing coal from January, 1900, down to January, 1909? A. Yes; that is right.

Q. This comparison on page 16 of this printed statement, "No. 1," of the tonnages and percentages of sizes of the output of all the companies combined, comparing the years 1892 and 1903, and showing the increase in small sizes, is something, if I understand you correctly, that you do not know about? A. No; I did not make that up.

Q. Can you say, broadly and generally, anything about whether it is correct, according to your best judgment,

without having verified it? A. I should say, yes. Without having checked it off with our shipments, I presume whoever made the statement—I have no hesitation in saying it is correct.

Judge Moot offers in evidence statement headed "Statement of Tonnages and Percentages of Sizes of the Output of all the Companies combined, comparing the Years 1892 and 1903, and showing the Increase in Small Sizes," which is marked, "Erie Exhibit No. 3, 6-8-09, C. H. G."

Judge Moot also offers in evidence a summary of the cost per ton of producing fresh mined coal of the Delaware and Hudson Company for the years 1890 to 1899, which is marked "Erie Exhibit No. 4, 6-8-09, C. H. G."

Judge Moot also offers in evidence detailed statement of the cost of producing fresh mined coal of the Delaware and Hudson Company from January, 1900, to October 1st, 1904, which is marked "Erie Exhibit No. 5, 6-8-09, C. H. G."

Judge Moot also offers in evidence statement, being continuation of the printed exhibits, from October 1st, 1904, to and including December, 1908, with a summary of such detailed statement for the years 1904 to 1908, inclusive, which is marked "Erie Exhibit No. 6, 6-8-09, C. H. G."

By JUDGE MOOT:

Q. Have there been any changes in the method of keeping these mine accounts since you became connected with this Mining Department? A. No; there has been no change in the method. Not since these reports were started; no change whatever.

Q. About when were these detailed statements of the cost of producing coal for the Delaware and Hudson Company started, according to your recollection? A. Do you mean the reports with the ——

Q. Keeping statistics for the Delaware and Hudson. About when did that begin, this general statement of statistics, keeping account of each mine, what it cost to produce coal at that mine? A. Ever since I have been connected

with the company they have kept accounts for each breaker.

Q. Separately? A. Yes, sir.

Q. How particular are they to see that items in what I might call the Railroad Department, or some other department, do not get mixed with the items of the Coal Department? A. Each department is organized, and the lines are very sharply drawn between the departments.

Q. What departments have you so organized? A. The Coal Mining Department, the Coal Sales Department and the Railroad Department.

Q. Have you anything to do with the Sales Department? A. Nothing.

Q. Have you anything to do with the Railroad Department? A. Nothing.

Q. You are solely connected with the Mining Department? A. That is all.

Q. I see on this statement, "Tons produced." Do you get the tonnage produced in the different mines from the mine clerks like Mr. Gartley, who has just been sworn, every day? A. We get a report every day from the mines.

Q. The clerks of the different mines furnish you with the tonnage of the different mines? A. Yes, sir.

Q. Every day? A. Every day.

Q. Where do you get your pay rolls other than the office there? A. Pay rolls are made up in our office and entered on our general books there.

Q. Where do you get your data from which to make up your pay rolls? A. We get the time from the mines.

Q. From mine clerks? A. Yes, sir.

Q. Each mine has a clerk? A. Yes, sir.

Q. And he puts down the time of each man? A. He puts down each man's time on the time book.

Q. Then the office fills in the man's pay on the pay roll? A. Yes.

Q. Pay rolls, office, surveyors, and so forth. That is what office—the Mining Department office? A. The Mining Department office only.

Q. Of the mine or of the Mining Department? A. The

Mining Department. The office at Scranton is the general office for the Mining Department, and these pay rolls are something which apply generally to all the mines.

Q. How do you divide the expenses of the Mining Department office at Scranton among the various mines of the Delaware and Hudson Company? A. The expense of clerks, and such general expenses which cannot be applied directly to any colliery, is prorated on the amount of tonnage produced to each one. It is a general charge.

Q. So far as possible, the expense of every colliery is charged to it on the basis of what that colliery does? A. It is.

Q. And where there is an office like your Mining Department, that is general to all the collieries—that expense is divided among them on a tonnage basis? A. Yes, sir. Let me explain. I am not familiar with the detail of that surveyor's gang. I think, however, that their time is distributed where they work. They work at different mines, and it might be possible to distribute their time directly. I don't know how that is.

Q. That is your best recollection? A. That is my best recollection, that it is so distributed.

Q. Supplies, machinery, material and freight on same? How are those got at—charged to the mine to which they go? A. Yes.

Q. Suppose props are ordered to one mine and they go to that mine, and after they get to that mine another mine goes through and they are shipped from that mine to the next mine? A. They are charged over.

Q. They are credited, however, to the mine that don't use them, and charged to the mine that does use them? A. Certainly. If a car load of props were shipped to a certain mine, they would be charged to the supply man at that colliery, and that man charged them out as they use them, and if they do not use them and they are sent to some other mine, then they are charged to that other mine. The accounts are very carefully kept.

Q. "Shaft sinking and other mining contracts, construction, &c." Those items are usually connected right with

some particular mine, which is easy to charge it to, I assume? A. Oh, yes.

Q. Freight. Suppose your mined coal goes over your own railroad, how then? Is there any charge for freight? A. We pay freight on it.

Q. Regular freight rate? A. At the present time, yes.

Q. How long has that been the case? A. I could not fix the date. I know for possibly more than a year the company had a special rate which it charged on their own coal. Maybe so much per ton a mile. I don't know about that.

Q. A lower rate do you mean? A. I don't know whether it was a lower rate or higher rate, but it was a special rate. It was a charge of the Railroad Department against the Coal Mining Department for transportation, but I am not familiar enough to know whether it was a lower or higher rate than was charged to the general public, but at the present time I understand that the regular freight rates are charged.

Q. Regular public freight rates? A. Regular public freight rates are charged in all Coal Department coal.

Q. "Royalties on coal mined." Those are the royalties actually paid to people from whom you get your coal under leases? A. That item needs explanation. "Royalties on coal mined" here means accrued royalties on the amount of coal mined. We may pay a minimum on a coal lease. We may pay a man $10,000 a year and not mine more than four or five thousand dollars, and when that comes in that amount is charged against the cost of coal and not the payment, so that it applies to the accrued royalty on coal mined at the specific rates.

Q. In other words, if the lease requires you to pay at least $10,000 a year royalty, as they sometimes do, or whatever it may be, whether you mined that coal or not, you have permission if you do not mine it that year to mine it some other year, I assume? A. Usually, yes.

Q. You pay a royalty on just as many tons as you actually mine, as I understand you? "Royalties on coal

mined" means the actual tonnage royalty on the coal mined? A. Certainly. That is it.

Q. On a minimum basis? A. That is right, and that was my reason for stating it in this way.

Q. "Railroad Department, other than freights." What would be the nature of that item? A. The Railroad Department makes numerous charges against the Coal Department. There are so many of them that, at this time, I cannot recall them, but, for instance, moving the pay car. We send out a locomotive and a crew for about eight days a month to pay the men at the mines. That is a charge. Transportation of Coal Department employees on the company's business; the Coal Department is obliged to move these men from place to place, and consequently to pay their fare, and mileage books, and commutation tickets are charges for the use of the Coal Department employees.

Q. How long have those things been done so broadly as that to get at the actual cost of mining? A. The general system has been in effect ever since I have known anything about the corporation. There have been some later—this transportation of employees has been a matter of three or four years back, but the general charges for material and services between the departments has always been in effect.

Q. Only as time has gone on and accounting has become a more perfect science they have got sharper in these details? A. Correct.

Q. For the purpose of getting at the actual cost as near as you could tell between the departments of producing this coal? A. Exactly.

Q. "Sundries, telephone, traveling expenses, damages, law expenses, insurance, &c." A. That item generally includes what is not specified above.

Q. Got at on the basis either of the actual expenses of a particular mine or the expenses in your office, that does the business for them all? A. Exactly.

Q. Spread on a tonnage basis, is that right? One or the other? A. Yes.

Q. "Sinking fund." What about that item? A. That is a charge which began, I think, in 1903, in our department. We began to make it by orders from the New York office.

Q. When did it originate in the New York office, as you understand it, or how? A. I believe that the stockholders ordered a sinking fund to be established in 1899. I have been told so. I haven't any knowledge of it.

Q. At some stockholders' meeting? A. Yes; some stockholders' meeting in 1899.

Q. By some resolution or ordinance of the stockholders? A. I believe so, yes, sir.

Q. But in 1903, you think, you first got instructions to put in the sinking fund? A. We did.

Q. On what basis is that made? What is the ground on which that rests? I mean the theory. A. The theory is to establish a sinking fund to meet the depreciation of lands by reason of having mined the coal out—exhaustion of capital, I should say.

Q. In 1905, 1906, 1907 and 1908, which happens to fall under my eye here, the summaries for those years, I see it is given as five cents in each case. I take it that that is five cents a ton? A. Five cents a ton is the rate.

Q. That is the sinking fund rate? A. That is the sinking fund rate.

Q. You have been connected with this Accounting Department a good many years. What do you say about whether that is a sufficient sinking fund or not? What is your own judgment about it? A. My personal opinion is that it is not enough.

Q. How much ought it to be do you think? A. I should think ten cents would be little enough.

Q. You base that judgment broadly without going into details. You base it broadly on what consideration? A. Interest on the original investment, taxes—always increasing—and other expenses of holding the lands, and the long time required to get their money back from the mining of coal.

Q. Does the value of the coal itself have anything to

do with it? In other words what you would have to pay in royalties per ton, if you had to lease all your mines to get that coal at the mines? A. At the present time?

Q. Yes. A. I should think that good workable veins would cost at least fifty cents a ton.

Q. For the entire output or just the prepared sizes? A. The prepared sizes.

Q. How about the smaller sizes? A. The smaller sizes, usually half rate. That is to say, the basis has been, sizes above Pea we would say fifty cents; Pea coal would be twenty-five, and smaller sizes twelve and a half, possibly. You might continue the variation from twelve and a half to six and a quarter.

Q. Are those royalties that are payable on coal lands that are leased usually fixed on the basis of a minimum of so much per year whether you mine coal or not? A. Usually, yes. That is, leases of any consequence.

Q. So that the man who leases his coal land won't be compelled to die without getting any income from it? A. That is right.

Q. Won't be at the mercy of the lessee? A. That is right.

Q. Have the royalties been going up, or have they been about stationary since you have known about them? A. They have been generally on the increase. There haven't been any leases made very recently that I have any knowledge of.

Q. How are the more recent leases you know about, as compared with the older leases you know about, as to the terms being more or less favorable to the lessee? A. The modern lease contains more strict definitions than the ancient lease; and, usually, in the modern coal lease, all the coal that is to be mined is to be paid for or accounted for in some way, while, under the old leases of forty or fifty years ago, they only paid for certain sizes at smaller prices.

Q. That is the prepared sizes, I assume? A. Yes. Usually designated as "Sizes above Pea."

Q. How are the old leases as compared to the modern leases about whether there is any royalty on pillars or coal

not mined, or are they both alike in that respect, or haven't you noticed? A. I don't think those things were mentioned in the old leases.

Q. Are they in the modern leases? A. I believe they are; yes, sir.

Q. In short, the man who is leasing coal land, as things have become more valuable, is getting sharper lawyers to draw his leases and is profiting by experience so as to get the utmost money out of his coal when he leases his land? A. That is right.

Q. Then, this sinking fund is far below what the coal would bring if you leased your land to somebody else to mine it? In other words, you would not lease this land for a five cent royalty on a tonnage? A. Oh, no.

Q. Although you are only charging up five cents a ton on the actual tonnage mined as a sinking fund? A. That is right.

Q. You charge that up, however, I suppose, whether you own the land or whether you lease the land? A. That is charged up on all coal mined.

Q. So that if you have an unprofitable lease, in that particular instance it would be a charge not so easy to sustain. That is, five cents on all the tonnage mined? Suppose one-fifth of all the coal you mined was mined on royalties, and, as a matter of fact, after paying your royalties you did not make anything on it. Then there would not be any profit in the thing on which to pay a sinking fund? A. No.

Q. On the other hand, if it was your own coal, and three-fifths of the coal you mined was your own coal, then at five cents a ton as a sinking fund you would be getting very much less for the capital you were taking out in the way of coal than it would cost you if you leased it from anybody else? A. It would seem so; yes, sir.

Q. "General office expenses." What does that item mean? A. That is an account sent to us once a month by the New York office for some portion of their expenses.

Q. The New York office of the Coal Mining Department do you mean? A. No; the New York office of the Delaware and Hudson Company—the general office.

Q. That is their apportionment of the part of their general New York office expenses that should be put upon the Coal Mining Department? A. That is it.

Q. You cannot tell us, I suppose, yourself, about the basis on which that was arrived at? A. I do not know anything about the items, and I have not seen one of those bills in several months. They are not itemized.

Q. During the lunch hour will you see some one in the New York office and get us some information on that? A. I talked to the controller this morning, but did not get any information.

Q. All you can say is that you do not know the theory on which that is apportioned? A. I don't know anything about it.

Q. Or about its correctness? A. It is simply a bill received and put into our accounts.

Q. It seems to vary from year to year, and not to be an arbitrary charge? A. Oh, no; it is not an arbitrary charge. I suppose it is an actual charge.

Q. Is it a detailed bill when you get it? A. Oh, no.

Q. You just put the item in just as you get it? A. Yes.

Q. You speak of the royalties paid for coal lands today when they are leased if it is good coal. Does the thickness of the vein, the character of the vein, the number of veins, and facts of that nature, have anything to do with the royalty that a man gets for his coal when he leases his land to a miner? A. I suppose so. I do not know the facts that govern these leases.

Q. In this Exhibit No. 1, that was put in this morning, for the Delaware Mine for the year 1908, showing in detail mining expenses and mining credits, under the head of "Supplies and Material," there is a credit of $4240.82, which amounts to about four and one-half cents a ton. Do you know anything about the nature and character of that item? A. I do not. I could not explain that. I do not know anything about it. I have nothing to do with this end of the business.

Q. Do you know anything about whether it is the custom of your company, in its general course of business,

to make any charge or credits in case a team connected with one mine is sent to another mine to haul coal for local delivery, or haul some material around, or something of that kind? A. Oh, yes; that has always been the custom.

Q. What is the custom that has always prevailed in that respect? A. To make a charge for the services.

Q. Do you know on what basis that charge is made, for a team, for instance? A. At the present time?

Q. Yes. A. I do not know except from hearsay. I think the price is three dollars and fifty cents a day. I would not like to offer that as evidence. I don't know anything about it.

Q. Do you know whether it is quite common for a profit to result to one mine when its team goes to another mine to do work? A. It might result in a profit, yes.

Q. And if there does result a profit, charging the team up, that profit is credited to that mine? A. Credited to the mine who owns or controls the team.

Q. This item of $4240.82 indicates that in some way a credit accrued to this Delaware mine for the use of its team or supplies or something or other, something that it gets credit for? A. This is for the year's business. That may have been an accumulated profit on supplies. We cannot keep our supply account at exact cost. That is impossible. We may have accumulated profits during the year, which should have been credited to this place. I do not know anything about that. I am not offering this as testimony.

Q. This particular mine, for instance, shows the average mine cost on the tidewater basis to be $2.6585, and the average price at tidewater basis to be $2.7040. If this apparent profit on supplies and material, whether it was team or props, or whatever it may have been, was taken out—the mine did not get credit for that—it would have what effect up here in the total average cost and tidewater basis? A. It is taken out.

Q. If that was not taken out, then what would be the

result? A. It would show a larger cost here, wouldn't it?

Q. Yes. Then, the cost here would be substantially the selling price? A. Exactly.

Q. So that the apparent profit of about four and a half cents a ton on the output of your mine for that year is, 4.49 of it found in that single item? A. Yes.

Cross examination.

By MR. MCREYNOLDS:

Q. What is the profit shown upon the Mining Department of the Delaware and Hudson Company per ton? A. I do not know.

Q. Don't your books show? A. Our books do not show any sales of coal. Our books simply show the cost of producing coal and putting it in cars, and beyond that I have no knowledge whatever.

Q. That is all you know about the Delaware and Hudson's business? A. That is all I know about the business.

Q. All the rest you have been giving us here is simply what has leaked through and gotten into your mind from outside sources? A. I do not know that I have said anything outside of the cost of coal. Maybe I made a slip somewheres, but I don't remember.

Q. We have got in this record a statement from the Delaware Mine for the year 1908, which purports to show a profit on the output of that mine of something less than five cents per ton. You have told us that coal in the ground can be leased at from fifty to six and one-quarter cents per ton. Will you explain to us why the Delaware and Hudson Company don't lease its mines instead of operating them, or don't you think any rational human being who could lease his land for fifty cents a ton would do it rather than operate it for five cents a ton? A. That is something that I do not know anything about. If that was the only mine he had and he was not making any profit on it, it would be wisdom to do something with it which would produce a profit.

Q. Don't you know that the way the books of the Delaware and Hudson Company are kept, that they do not show anything like the net profit on mining that you say the coals are worth in the ground to be mined by somebody else? A. You are speaking of the general reports?

Q. Yes. A. I am not familiar enough with their annual report.

Q. Don't you know that fact? A. I think that fact is right.

Q. Don't that all show that your books are a lot of stuff and do not really show the facts? A. You state it, "Your books." My books ——

Q. I do not mean your particular books, but I mean the books generally kept by the company. A. I do not know anything about their general accounts. I know that our account is very carefully and strictly kept in our department.

By JUDGE MOOT:

Q. You know that if the rest of the books are kept as carefully as the books in your department, then they show the truth? A. They do.

Q. Yours do? A. They certainly do, as far as we are able to do it.

Adjourned until a date to be agreed upon.

Met pursuant to notice, Friday, June 11th, 1909, at 10.30 A. M., at the Astor House, New York City.

Present.—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. John L. Seager, Esq., representing Delaware, Lackawanna and Western Railroad Company. Hon. Adelbert Moot, representing Hillside Coal and Iron Company; Erie Railroad Company, New York, Susquehanna and Western Railroad Company; Pennsylvania Coal Company; New York, Susquehanna and Western Coal Company, and Clarence Coal Company.

REESE A. PHILLIPS, having been duly sworn, was examined as follows:—

By MR. SEAGER:

Q. You are connected with the Delaware, Lackawanna and Western Railroad? A. Yes.

Q. In what capacity? A. Superintendent of the coal mines.

Q. How long have you been engaged in that capacity with the Delaware, Lackawanna and Western Railroad? A. About seven years, as superintendent.

Q. Before that, were you connected with the Mining Department of the road? A. Yes, sir; I have been connected with the Mining Department of that road for about thirty years.

Q. Are you familiar with the methods of purchasing coal by the Delaware, Lackawanna and Western Railroad of the independent operators, so called? A. Yes, sir.

Q. And the contracts providing for the purchase of coal from such independent operators? A. Yes, sir.

Q. State whether or not it has been the practice of the Delaware, Lackawanna and Western Railroad Company to purchase from outside operators, independent

operators so called, along its line, anthracite coal? A. Yes, sir; it has been the practice and is the practice.

Q. Since when? A. Ever since individual operations have been located along our lines; as long as I can remember, way back in the early 70's.

Q. State whether or not it has been the practice to so purchase coal at a percentage of tidewater prices realized upon coal transported to New York harbor. A. Yes, sir; that is the manner in which the coal is purchased, on a percentage of tidewater prices.

Q. Since when has that practice obtained? A. I do not recall the exact date when that first started, the buying of it on the tidewater prices, but I think the first one I have knowledge of is about 1878.

Q. That you have personal knowledge of? A. Yes.

Q. But you understand that the practice was in vogue even before that? A. Oh, yes.

Q. Since 1892 the Delaware, Lackawanna and Western Railroad has had contracts for the purchase of coal with what companies and individuals? A. We have had contracts with the Clear Spring Coal Company; Kingston Coal Company; Pancoast Coal Company; William Connell & Co.; Mount Lookout Coal Company; Forty Fort Coal Company; Lackawanna Coal Company; People's Coal Company; George F. Lee Coal Company.

Q. With that company there are two contracts? A. Yes, sir; and the North End Coal Company.

Q. With reference to the contract you have mentioned with the Kingston Coal Company, what has become of that? A. That contract has expired, the Kingston Coal Company contract.

Q. When? A. 1907, I think; 1906 or 1907.

Q. Is the Kingston Coal Company a large operation? A. Yes, very large; one of the largest individual operations in the anthracite region.

Q. And the largest independent operation along the line of the Delaware, Lackawanna and Western? A. Yes, sir.

Q. Does that company ship over the line of the Dela-

ware, Lackawanna and Western Railroad Company a large tonnage of coal yearly? A. Yes, sir; they ship a very large tonnage.

Q. And it has for how many years past? A. Ever since they have been in business.

Q. About how long is that, to your knowledge? A. About thirty years; more than thirty years. We had a contract with them in 1878 for mining coal for us.

Q. Since the expiration of the Kingston Coal Company contract in 1907, has that company sold to the Delaware, Lackawanna and Western Railroad Company a large tonnage of coal? A. Yes, they have sold us a very large tonnage of coal. In fact, we have had a greater tonnage from the Kingston Coal Company since our contract expired than we did prior thereto.

Q. What percentage of increase of tonnage does the Delaware, Lackawanna and Western get now over that which it obtained under the contract? A. I could not give you the exact increase, but I think it would be safe to say fifteen per cent. at least.

Q. The coal which we have purchased from the Kingston Coal Company since 1907 has been purchased without any contract whatever? A. Yes, sir; without any contract whatever.

Q. And paid for upon the sixty-five per cent. basis? A. Sixty-five per cent. basis, yes, sir.

Q. Besides the coal purchased by the Delaware, Lackawanna and Western of the Kingston Coal Company, state whether or not a large tonnage of the Kingston Coal Company coal is transported over the lines of the Delaware, Lackawanna and Western and sold locally by the Kingston Coal Company? A. Yes; quite a large tonnage of the product of the Kingston Coal Company is sold along our line. In fact, at present about forty per cent., forty to forty-five per cent. of the tonnage of the Kingston Coal Company is sold, divided up, I do not know in what proportion, along our line and to the Susquehanna Coal Company or the Pennsylvania Railroad

Company, I do not know which; I know it goes out in Pennsylvania Railroad Company cars.

Q. Among the contracts which you have mentioned is that with William Connell & Co. What has become of that contract? A. That contract expired before we purchased the colliery.

Q. When did it expire? A. The contract expired about the year before we purchased the colliery.

Q. What I am trying to get is the date. A. That was 1905, I think. I am not positive; either 1904 or 1905.

Q. So that, at the time of the filing of the petition in this case in June, 1907, there were existing contracts held by the Delaware, Lackawanna and Western for the purchase of coal of what individuals and companies? A. Clear Spring Coal Company, the Pancoast Coal Company, Mount Lookout Coal Company, Lackawanna Coal Company, People's Coal Company, George F. Lee Coal Company, and the North End Coal Company.

(The Delaware, Lackawanna and Western Railroad Company produces the original contracts referred to by the witness and certain other contracts preceding those mentioned by the witness, and it is proposed to read portions of these contracts in evidence, instead of introducing them and having them printed in full. Counsel for the Government may introduce such portions of the contracts also as they may be advised.)

Q. In the case of the Clear Spring Coal Company contract, when did the Delaware, Lackawanna and Western first have a contract with the Clear Spring Coal Company? A. I think the first contract was in 1882, January, 1882; about the first part of 1882.

Q. With whom was that contract? A. That contract was with Dewitt & Cake; a firm name.

Q. Afterwards did Dewitt & Cake form a limited partnership under the name of the Clear Spring Coal Company? A. Yes, they formed a limited partnership under the name of the Clear Spring Coal Company later. I think about 1899 or something like that; I am not sure of the year.

Q. 1898, I think? A. 1898, yes.

Q. What happened in 1898? A. In 1898 they formed a limited partnership and continued their contract.

Q. You mean the Dewitt & Cake contract? A. The Dewitt & Cake contract.

Q. Then thereafter what happened with respect of the limited partnership? A. Then they formed a partnership under the name of the Clear Spring Coal Company and continued the contract as originally made by Dewitt & Cake.

Q. That is, continued it in the name of the Clear Spring Coal Company, the corporation? A. The Clear Spring Coal Company, the corporation.

Q. The coal which is the subject of the Dewitt & Cake contract was originally owned by the Delaware, Lackawanna and Western Railroad Company? A. The Dewitt & Cake coal?

Q. Yes. A. I think there was a portion of it.

Q. And the coal covered by that contract, or a portion of it, was transferred or leased by the Delaware, Lackawanna and Western Railroad Company to one Wisner? A. Yes; Clinton Wisner.

Q. Who transferred such coal to Dewitt & Cake? A. Dewitt & Cake, yes, sir.

MR. SEAGER:—I will read the portion of the Dewitt & Cake contract, dated twelfth day of January, 1882, relating to the price to be paid for coal purchased:—

"And the said party of the second part will receive and pay for said coal at the rates and in accordance with the scale following, to wit:

"When the average price paid by the said party of the second part to the miners employed at their aforesaid collieries shall be seventy-two cents and fifty-seven one hundredths of a cent per ton, they shall pay to the said parties of the first part one dollar and eighty cents per ton for the coal delivered as hereinbefore provided, and whenever and as often as the aforesaid average price paid by the said party of the second part to the miners at their aforesaid collieries shall be increased or decreased,

the price to the said parties of the first part for coal delivered as aforesaid shall be increased eight and one-half cents per ton for every five cents per ton of increase paid to the miner and shall be decreased eight and one-half cents per ton for every five cents per ton decrease paid to the miner, and so in proportion to any greater or lesser increase or decrease to or from the aforesaid average price to the miners at said collieries, the price now paid the miner is less than the said seventy-two cents and fifty-seven one hundredths of a cent."

The granting clause of the Dewitt & Cake contract reads as follows:—

"That the said parties of the first part for and in consideration of the covenants and agreements hereinafter contained, to be kept and performed by the said party of the second part * * * have granted, bargained and sold and by these presents do grant, bargain and sell to the said party of the second part, its successors and assigns, loaded in the cars of the said party of the second part upon suitable and convenient side tracks at the colliery, to be erected upon the lands in said indenture described, all of the coal," &c. (Here follows description of the land.)

By MR. SEAGER:

Q. When was the contract with the Pancoast Coal Company made? A. 1899.

Q. On or about the time that that contract was made, state whether the Delaware, Lackawanna and Western Railroad loaned a sum of money to the Pancoast Coal Company? A. Yes; about the time that the contract was made, the Delaware, Lackawanna and Western Railroad Company loaned a sum of money to the Price-Pancoast Company.

Q. The predecessor of the Pancoast Coal Company? A. Yes.

Q. How much money was that? A. I do not recall the amount of money that the company loaned, but it was to be paid back in coal. In other words, they were to give us so much coal every year in monthly quantities;

we purchased the same on a sixty-five per cent. basis, I think, and they paid at the rate of ten cents a ton until the total amount of money was paid back—some arrangement of that kind. I do not exactly recall the salient features of it.

Q. That is, out of the purchase money, the Pancoast Company was to pay the Delaware, Lackawanna and Western ten cents per ton on all coal mined until the loan was satisfied? A. Was paid, yes, sir.

Q. That loan was $150,000, was it not? A. $150,000 or $200,000; I am not sure. It was somewhere around that neighborhood. It has been satisfied since.

Q. That $150,000 has since been paid? A. Yes, sir.

Q. And two million tons of coal which were purchased under the Pancoast contract has been delivered to the Delaware, Lackawanna and Western Railroad Company? A. Yes, sir.

Q. And the contract is performed? A. Performed, yes, sir.

Q. What coal does the Pancoast Coal Company mine? A. It is leased coal.

Q. From whom does it lease the coal that it mines? A. From the Price-Pancoast estates, and other lessors whom I do not recall.

Q. Since the full performance of the contract, the delivery of the two million tons of coal provided for, has the Pancoast Company sold coal to the Delaware, Lackawanna and Western? A. Yes, sir. Since they have fulfilled that contract, we are still receiving coal from them and they are selling coal to the Delaware and Hudson and the Ontario and Western Railroad Companies.

Q. And they are selling coal locally along the line of the Delaware, Lackawanna and Western? A. I presume they are.

MR. SEAGER:—I will read into the record the granting clause contained in the contract between the Pancoast Coal Company and the Delaware, Lackawanna and Western Railroad Company, dated July 1st, 1899:—

"Witnesseth, that the said Coal Company, for and in

consideration of the sum of One hundred and fifty thousand dollars this day advanced and paid by the said Railroad Company, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain and sell unto the said Railroad Company, its successors and assigns, two million (2,000,000) tons of merchantable coal contained in the land embraced in the leases hereinafter described, to wit:" (Here follows description of the leases.)

Q. The coal sold under this contract is produced at what is known as Pancoast colliery? A. Yes, sir.

Q. At the time of the loan of this $150,000 there were mortgages and other encumbrances upon the Pancoast Coal property? A. Yes, sir.

Q. And the object of this loan was to discharge those encumbrances? A. Yes, sir.

MR. SEAGER:—From the same contract the provisions as to payment of the purchase price of the coal are as follows:—

"The said Railroad Company shall pay the said Coal Company for the coal sold and delivered under this indenture in manner as follows, to wit: For all sizes above pea coal the price to be paid shall be sixty per cent of the average price received by the Railroad Company for said coal at tidewater. For pea coal 45 per cent of said average price. For buckwheat, 32 per cent of said average price. Said prices to be ascertained monthly from the average monthly sales of the said Railroad Company." "* * * And it is further provided that if at any time during the continuance of this contract a higher price or larger percentage of the sale price at tidewater and the price named above is established generally as the price to be paid by the Delaware, Lackawanna and Western Railroad Company and other corporations of a similar nature to miners of anthracite coal in the Lackawanna Valley, then in such event the prices to be paid under this contract shall be increased to conform to such generally established prices."

Q. Will you state the date of the contract with William Connell & Co.? A. I think it was made about 1892.

Q. That contract, as you have stated, has expired? A. Yes, sir.

Q. That contract has been fully performed and the Delaware, Lackawanna and Western Railroad has acquired the operation? A. The colliery, yes, sir.

Q. After the contract made in 1892, there was another contract made with William Connell? A. Yes, sir, I think there was, in 1901, which was practically a continuation of the old contract, with some modifications as to the price to be paid.

Q. And the new contract of 1901 covered additional coal subsequently acquired? A. Yes, sir.

MR. SEAGER:—From the contract with William Connell, made September 25th, 1901, I will read a selection:—

"Whereas, by an agreement dated the sixteenth day of June in the year of our Lord One thousand eight hundred and ninety-two, William Connell, Alfred Hand and Ezra H. Ripple, and William Connell, Ezra Ripple and James L. Connell, executors of the last will and testament of Alexander Connell, deceased, doing business as William Connell & Company, of the City of Scranton, County of Lackawanna and State of Pennsylvania, granted, bargained and sold and agreed to mine, prepare and deliver unto the Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania, one million seven hundred thousand (1,700,000) tons of coal to be mined from the lands connected with the "Meadow Brook" and the "National" mines; and whereas the Delaware, Lackawanna & Western Railroad Company has agreed, in lieu of the prices in said agreement of the sixteenth day of June A. D. 1892, to pay the said William Connell & Company the same prices as it has agreed to pay like shippers of anthracite coal in the Lackawanna and Wyoming Valleys for the balance of the coal so to be delivered, in accordance with the terms and conditions of said agreement as in and by the said above recited agreement, reference being thereto had, will more fully and at large appear; now therefore this agreement * * * witnesseth that for and in consideration

of the sum of one dollar lawful money unto them in hand well and truly paid by the said party of the second part at and before the execution hereof, the receipt whereof is hereby acknowledged, the said parties of the first part, their heirs, successors and assigns, doth hereby covenant and agree to and with the said party of the second part, its successors and assigns, that they will in accordance with the terms of that certain agreement dated the sixteenth day of June A. D. 1892, deliver the balance of the anthracite coal which now remains unmined and undelivered under the terms of the aforesaid agreement, and which can be mined and prepared in and from the lands connected with the mines and collieries aforesaid."

"And the said, the Delaware, Lackawanna & Western Railroad Company, its successors or assigns, doth hereby agree to pay the said parties of the first part the following prices for said coal when prepared in accordance with the standard as set forth in the above recited agreement and delivered free on board railroad cars at the breaker:" (Then follows the statement of prices to be paid.)

Q. The People's Coal Company contract was made when? A. 1889, I think.

Q. The one now in force was made when? A. 1899, the latter part of 1899.

Q. And the contract made in 1899 has continued in force down to the present time? A. Yes, sir.

Q. At the time this contract was made the People's Coal Company contemplated the erection of a breaker? A. Yes, sir.

Q. On certain land which they held under lease? A. Yes, sir; on lands that the Delaware, Lackawanna and Western Company owned.

Q. The coal covered by this agreement with the People's Coal Company is known as what operation? A. Known as the Oxford Coal Company, owned by the Delaware, Lackawanna and Western Railroad Company.

Q. What did the Delaware, Lackawanna and Western Railroad Company do with that operation previous to making this contract? A. The breaker was destroyed by fire

and the People's Coal Company leased a certain portion of this coal owned by the Delaware, Lackawanna and Western Railroad Company from the Company and erected a breaker on the property and, when the lease was made with the People's Coal Company, it was with the distinct understanding that we were to market their product, that is, such part of it that they did not sell locally in the city of Scranton.

Q. That lease was made as part of the consideration for this contract? A. Yes, sir.

Q. The contract provides for the sale of the coal at the breaker? A. Yes, sir.

MR. SEAGER:—The provision in the contract as to the price to be paid the railroad company for the coal is as follows:—

"7. The said Railroad Company shall pay the said Coal Company for all the coal sold and delivered under this agreement in manner as follows, to wit:

"For all sizes above the size of pea coal, the price to be paid shall be 50 per centum of the average price received by the said Railroad Company for all sizes above and including pea coal for the coal sold free on board cars at Hoboken during the month in which said coal is delivered. To the price so obtained there shall be added to grate coal, should any be furnished, the sum of thirty cents per ton; to the price of egg coal, the sum of forty cents per ton. To the price of stove coal, the sum of fifty cents per ton. To the price of chestnut coal, the sum of twenty-five cents per ton. The price for pea coal to be one dollar less per ton than the price paid for chestnut coal. The price for buckwheat, when this size is furnished, to be one half the price paid for pea coal. It being distinctly understood and agreed that a ton under this agreement shall be 2240 pounds and that the prices to be paid for coal to be delivered under this agreement shall be equal to and not more than the prices paid by the Lehigh Valley Coal Company to its individual shippers under certain agreements now made and which prices are made upon the said Lehigh Valley Coal Company's sales of coal at tidewater. Should the said Coal Com-

pany prove to the satisfaction of the said Railroad Company that the prices paid for the respective sizes delivered under this agreement in any one month are lower than the prices paid by the said Lehigh Valley Coal Company for said sizes under its agreements as aforesaid, the said Railroad Company will at the next pay day pay the difference in the said prices to the said Coal Company for the coal delivered in such month, and should the superintendent of the Coal Mining Department of the said Railroad Company show that the prices paid by it for the respective sizes of such coal to such Coal Company were higher than the prices paid by the said Lehigh Valley Coal Company to its individual shippers under its agreements as aforesaid during any preceding month, the difference between the said Railroad Company's and the prices paid by the said Lehigh Valley Coal Company shall be deducted from the payments to be made to the said Coal Company at the succeeding pay day."

Q. When were the existing contracts, two in number, with the George F. Lee Coal Company made? A. I think one was made in 1903 and and the other in 1907.

Q. What is the name of the operation where the coal covered by those contracts is mined? A. Chauncey mines.

Q. From what concerns did the George F. Lee Coal Company acquire the coal covered by those contracts? A. The coal that they are mining is all leased coal. A portion of it is leased from the Susquehanna Coal Company, and the larger portion is leased from the Delaware, Lackawanna and Western Railroad Company, with two or three other small leases from individuals. The Susquehanna Coal Company operated this colliery a great many years ago and shipped their product over the Pennsylvania Railroad. Later it changed hands and finally it became in the ownership of George F. Lee.

Q. It was transferred from the Susquehanna Coal Company to George F. Lee? A. There was a firm by the name of Runnell's Coal Company came in between there; I do not recall their corporate name. Then it was finally acquired by George F. Lee. In this case

of 1907, that leases additional coal to George F. Lee, with the distinct understanding that all of the product of the Chauncey Colliery shall be delivered to our company, as we consider the major portion of the coal belonging to us.

Q. Is it a fact that the major portion of the coal held by the George F. Lee Coal Company which it is mining, was acquired by that company from the Delaware, Lackawanna and Western Railroad? A. Yes, sir.

Q. The making of those leases by the railroad company to the George F. Lee Coal Company was induced by the agreement to dispose of the tonnage to the railroad company? A. Yes, sir; that is the idea.

Q. What is the arrangement as to the purchase price in these agreements with George F. Lee? A. We purchased the coal on the sixty-five per cent. basis of tidewater prices; that is, the coal known as prepared sizes, or coal above Pea coal. The Pea coal and sizes below Pea was purchased on a sliding scale, based on the price received at tidewater. I do not know exactly the percentages.

Q. Practically on the regular sixty-five per cent. basis? A. Yes, sir.

Q. The contract with the North End Coal Company was made when? A. That was made in 1906.

Q. That contract then made is still in force and effect? A. That contract is still in force

Q. All the coal mined at the North End Coal Company is owned by the Delaware, Lackawanna and Western Railroad Company and leased by it to the North End Coal Company? A. Leased by it to the North End Coal Company.

Q. That coal, that is, the coal produced at that operation, is sold at the breaker? A. Yes, sir, a portion sold to the Delaware, Lackawanna and Western Railroad and a portion to the Ontario and Western.

Q. At the time of the making of this agreement, the North End Coal Company was obligated to sell the Ontario and Western Railroad Company one hundred and fifty thousand tons of coal? A. Yes, sir.

Q. Has that obligation been fulfilled? A. Not yet.

Q. They are still furnishing coal to the Ontario and Western? A. The Ontario and Western, yes, sir.

Q. In this North End Coal Company operation, did the Delaware, Lackawanna and Western receive any coal whatever prior to the making of this contract in 1906? A. No, sir, we never received any coal from the North End Coal Company prior to the date of that lease. They were operating the colliery for several years prior to 1906 and their entire output was delivered to the Ontario and Western Railroad Company, except what they sold locally.

Q. Although the Delaware, Lackawanna and Western had leased the land to the North End Coal Company? A. To the North End Coal Company; we owned the colliery.

Q. Or its predecessors? A. Yes, sir.

Q. The Delaware, Lackawanna and Western Railroad Company had a contract with the Mount Lookout Coal Company and with the Lackawanna Coal Company prior to the acquisition of those two companies by Simpson and Watkins in 1899, did it not? A. Yes, sir.

Q. State whether or not, since those two operations were acquired by Simpson and Watkins, the Delaware, Lackawanna and Western has received substantially the same tonnage from those two collieries. A. Practically the same tonnage, yes; that is, the same proportion of the tonnage mined.

Q. There has been no change in that respect since the purchase by Simpson and Watkins? A. No, no change whatever.

Q. The Forty Fort Coal Company at one time sold the Lackawanna Railroad coal? A. Yes, sir.

Q. But that contract expired about when? A. About 1898, I think.

Q. Prior to the Simpson and Watkins purchase? A. Yes, sir.

Q. Beside the operations which we have referred to, with whom the Delaware, Lackawanna and Western have

contracts for the purchase of coal, what other independent operations are located along the line of the Delaware, Lackawanna and Western Railroad? A. There is the Sibley Colliery, operated by Elliott McClure & Co., located on our line; the Black Diamond and Dodson collieries, operated by John C. Haddock; the Gaylord Colliery, operated now by the Kingston Coal Company; Mount Jessup Colliery, located on our line, operated by the Mount Jessup Coal Company; the Murray Colliery, operated by Carney & Brown; East Boston Colliery, operated by W. G. Paine Company; the Marion Washery, operated by the Marion Coal Company; Mount Pleasant Colliery, operated by the Scranton Coal Company; Bound Brook Colliery, operated by the Scranton Coal Company; the Parrish Colliery, operated by the Parrish Coal Company; Nottingham, Lance and Reynolds collieries, operated by the Lehigh and Wilkes-Barre Coal Company.

Q. Does that complete the list? A. I think that is about all. There is another washery down below the Chauncey Colliery, where the bank is owned by the Susquehanna Coal Company and leased to some individual concern whose name I cannot recall. It is on our line.

Q. That is a new operation, is it? A. No; it is comparatively new, about a year and a half or two years.

Q. You do not know the name of it? A. No.

Q. With none of those companies has the Delaware, Lackawanna and Western Railroad a contract for the purchase of coal? A. No, they have not a contract with either one of those, but some of the collieries that we have already named, for instance, the Kingston Coal Company, we have now no contract with as well.

Q. Which of those operations shipped coal over the Delaware, Lackawanna and Western line, independent of the Delaware, Lackawanna and Western Railroad mines? A. There is the Dodson and Black Diamond collieries; East Boston; Kingston Coal Company; Gaylord; and there is the Dunmore Coal Company on our line also, that I forgot. They

sell individually. Mount Jessup Coal Company; Marion Washery. Then there is another colliery known as the Mott Haven Coal Company. That is located on our line; that sells independently.

Q. What can you say of the tonnage shipped by those different operations, as to whether it is large or small? A. Some of them are large and others are small.

Q. Which are the larger ones? A. There is the Kingston Coal Company, of course, is the largest; and the Dodson; Mount Jessup and Sibley; the Marion Washery has quite a tonnage; East Boston a fairly good tonnage, seven or eight hundred tons a day. Bound Brook and the Parrish Coal Company are very large operations. Of course, the Nottingham, Lance and Reynolds collieries, operated by the Lehigh and Wilkes-Barre Coal Company, are very large operations.

Q. The coal from those operations does not travel over the Delaware, Lackawanna and Western Railroad? A. Oh, yes. The Lehigh and Wilkes-Barre collieries are located, that is the collieries I have named, are located on our line, and the engines of the Central Railroad Company of New Jersey haul their own cars over our line to these collieries. I guess they have a haul of about two miles, and they connect with the Central Railroad via a Delaware and Hudson connection at Plymouth Junction.

Q. The product of the Mount Pleasant Colliery is handled by the Ontario and Western? A. The product of the Mount Pleasant is handled by the Ontario and Western, yes, sir, as well as the Bound Brook.

Q. In the case of the East Boston Colliery, part of its product is sold locally on the line of the Delaware, Lackawanna and Western Railroad and part on the line of the Lehigh Valley? A. Yes, sir. The Black Diamond and Dodson are sold independently on our line.

Q. The product of the Bound Brook Colliery is also sold to the —— A. Sold to the Ontario and Western. I do not know whether I mentioned the fact that the Kingston Coal Company are mining a lot of coal for our company; that was under a mining contract.

Q. Under a mining contract whereby the Lackawanna Railroad pays the Kingston Coal Company for the work of mining? A. So much a ton, yes, and that coal is delivered to us.

Q. It is our mine and our coal? A. Yes, sir.

Cross examination.

By MR. MCREYNOLDS:

Q. You say you have been acquainted with the methods of purchasing coal by the Delaware, Lackawanna and Western Railroad since in the 70's? A. Yes, sir.

Q. Tell us, during the earliest time with which you are acquainted, how the freight rate over the Delaware, Lackawanna and Western Railroad for independent carriers who shipped to tide at New York was determined? A. I do not know anything about the freight rates; nothing whatever.

Q. Do you not know that for a long time the railroad accepted from independent shippers, by some arrangement or other, a certain percentage of the tidewater price for freight rates? A. No, sir, I do not; nothing at all. When you get back to the early 70's, my knowledge of the sale of coal in the early 70's was based upon this Kingston Coal Company contract of 1878. I think I specified that in my direct examination.

Q. Are you acquainted with the arrangement at one time, then, in the 70's or since, existing between shippers and the Delaware, Lackawanna and Western Railroad Company, whereby the railroad accepted a certain per cent. of the tidewater prices for freight? A. No, sir.

Q. What company were you connected with in 1880? A. The Delaware, Lackawanna and Western Railroad Company.

Q. Were you in its Coal Mining Department? A. Yes, sir; I was working in the mines in 1880, track laying.

Q. How long have you been acquainted with the general operation of the Delaware, Lackawanna and Western Railroad, so far as it affects the purchase of coal? A. 1902.

Q. Your acquaintance with its affairs prior to that time was limited to some local collieries? A. Some local collieries and the data and the leases I have in the office, contracts.

Q. Since 1902 you have been superintendent of coal mines? A. Yes, sir.

Q. As superintendent of coal mines, what are your duties? A. My duties are looking after the operation of the collieries.

Q. What do you mean by that? A. Superintending the operations, getting out the tonnage, the preparation of coal, and loading it into cars.

Q. You have nothing to do with the transportation? A. No.

Q. You have no acquaintance with transportation problems or rates? A. No, sir; nothing at all.

Q. Do you have anything to do with the coal that is purchased from other operators? A. Nothing whatever. All I have to do is just merely the operation of the mine itself, of the mines belonging to the Delaware, Lackawanna and Western Railroad Company. My duties cease after the coal is put in the cars at the breaker.

Q. You have been testifying a good deal here about these sixty-five per cent. contracts with independents. A. From my knowledge from having them on file in our office.

Q. Your acquaintance with those contracts and the operation under them is limited to what the contracts recite? A. Yes, sir.

Q. That is all you know? A. Yes, sir.

Q. You have nothing to do with the receiving of the coal from the other independent mines? A. We receive the coal from them—that is, I do not have anything to do with receiving it. The coal is put in our cars at our collieries. Our engines go in and take it and they manifest the tonnage to us.

Q. Let us see how that is practically worked out. Here is the coal company which has the sixty-five per cent. contract with the Delaware, Lackawanna and Western. Do you have anything to do with seeing that that

contract is carried out? A. Nothing more than to see that we get the coal under that contract, and no one else gets it, that is all.

Q. Practically speaking, do you superintend the execution of those contracts, or is it done by somebody under you? A. If there is any superintendence to be done, of the execution of the contracts, it is done by me.

Q. You buy coal from the Kingston Coal Company? A. Yes, sir.

Q. How many tons a year? A. We get anywhere from two thousand to twenty-five hundred tons a day.

Q. At how many collieries? A. Two.

Q. What is the name of those collieries? A. No. 2 and No. 4.

Q. Let us take colliery No. 2. How much coal do you get there every day? A. We get from there about fifteen or sixten hundred tons; I do not remember exactly.

Q. Is that delivered at the breaker into cars belonging to the Delaware, Lackawanna and Western? A. Yes, sir.

Q. Who weighs it? A. Our weighmaster.

Q. Have you a weighmaster stationed at colliery No. 2? A. Yes, sir.

Q. Who manifests it and where is it manifested to? A. It is manifested by our clerk in the office.

Q. What office? A. And sent to our yard in Scranton, and then the yard clerk bills it from there by the directions of our coal clerk in our local office. All that coal is sent to our yard, say at Scranton, and it comes in there as Delaware, Lackawanna and Western coal. It is all Delaware, Lackawanna and Western coal. We pay them on the weight set at the breaker and then the coal is shipped from our yards to various points along our line or off our line, as per instructions from the clerk in our office.

Q. So you have a superintendent or weighmaster located at this colliery No. 2? A. Yes, sir.

Q. He weighs the coal when it is put into your cars by the Kingston Coal Company? A. Yes, sir.

Q. And upon those weights you pay the Kingston Coal Company? A. Yes, sir.

Q. Having been put into your cars, it is sent to your yard at Scranton and there it is manifested to wherever you want it to go? A. Yes, sir.

Q. What allowance is made for wastage from those weights? A. No allowance.

Q. No allowance? A. No, sir; unless it can be proven that there is some mistake made in the weight.

Q. If your weighmaster reports to you that he receives a carload of coal at colliery No. 2, say, of the Kingston Coal Company and that it weight forty tons and five hundredweight, you pay the Kingston Coal Company sixty-five per cent. of the tidewater price of that amount of coal? A. Yes, sir.

Q. Without any allowance or deduction whatsoever? A. The coal is weighed at tidewater. Coal that comes to tidewater is weighed here and the mine weights are verified.

Q. Suppose there is a difference between the tide weights and the mine weights; then what? A. Then it is generally settled satisfactorily.

Q. Is there any rule about it, or does each particular case stand on its own merits? A. If they find there is a difference, it is very carefully weighed and looked after and straightened out. For instance, if you weigh a car of coal at the mines and it should weigh two tons and you bring it down to tidewater and it weighed a ton and a half, that difference is so noticeable that it is re-weighed at some other point so that there will be no dispute as to the difference, and if it is weighed at another scale and found to be a ton and a half, then, of course, that is what it is paid upon and the scales at the mine are looked after.

Q. Generally speaking, you settle on the mine weights without deduction, unless there is a manifest error? A. Yes, sir.

Q. The coal you buy from the Kingston Coal Company is still bought on the same terms that prevailed while the contract with them was in force? A. Yes, sir.

Q. You have an inspector also at colliery No. 2 of the Kingston Coal Company, in addition to the weighmaster? A. Yes, sir.

Q. He sees that the coal comes up to grade? A. Yes, sir.

Q. These contracts that you have been testifying about, commonly known as the sixty-five per cent. contracts, those which are now in existence are for the life of the mines which they cover? A. I think they are all for the life of the mines; I am not positive.

Q. The contract which you had with the Kingston Company did not cover the mine during its life? A. No, sir.

Q. What is the object in having those contracts cover the life of the whole mine? A. I do not know. I did not make them.

Q. Why does the Kingston Coal Company sell its coal to the Delaware and Lackawanna Railroad Company instead of selling it in the open market upon its own account? A. I cannot say.

Q. It gets a better price, does it not? A. I presume so. I do not know.

Q. Do you not know, as a matter of fact, that no independent mine could pay the freight rate, pay the cost of selling, pay the transportation of coal to New York city, and sell its coals here at the current rate and come out as well as if it sold to the railroad company at the time? A. I do not know. Some of them are selling it that way.

Q. Some of them who have a special grade which brings a higher price than the ordinary? A. No, not any special grade; collieries adjoining ours and other collieries along our line.

Q. How much coal is sold in New York by independents along your line? A. I do not know the tonnage.

Q. Approximately what would you say it was of the total? A. Possibly two or three hundred thousand tons a year.

Q. Out of how much total? A. Of our tonnage?

Q. The total tonnage over your railroad. A. Possibly seven or eight million tons.

Q. How much of that two or three hundred thousand tons is steam sizes? A. I did not have steam sizes in mind when I spoke. I think it is all prepared coal, what I call prepared coal; fresh mined coal.

Q. This Kingston Coal Company sells also to somebody else a part of its output, does it not? A. Yes, sir.

Q. Who is that somebody else. A. The Susquehanna Coal Company.

Q. And that is the Pennsylvania Railroad Company, is it not, or supposed to be connected with it? A. I think so.

Q. What is the arrangement about the division of the output of the Kingston Coal Company between your railroad and the Susquehanna Coal Company or the Pennsylvania Railroad? A. We have no understanding as to division at all. The only coal that we have any claim on the Kingston Coal Company for is coal that they are mining for us under a mining contract. In or about 1878 we leased some coal land to the Kingston Coal Company, in other words, we had a tract of coal land adjoining the lands of the Kingston Coal Company, which was being mined by the Kingston Coal Company for the Delaware, Lackawanna and Western Railroad Company. The Kingston Coal Company acts as a miner for our company. We pay them certain rates for mining the coal for us and that coal is to be delivered in our cars at their breaker.

Q. That much is under contract? A. That much is under contract.

Q. But they sell to you a good deal of their coal on the sixty-five per cent. basis outside of that? A. Yes, sir.

Q. Why does the Delaware, Lackawanna and Western buy this coal at sixty-five per cent.? Do you know? A. They are in the coal business. I presume that is the reason they buy it.

Q. Do you know what the result of those contracts is to the Delaware, Lackawanna and Western, whether they make money on them or lose? A. I do not know anything about that.

Q. You do not know anything about that? A. No.

Q. That does not come under your supervision ? A. Not at all, no.

Q. Where does the coal that you buy from the Kingston Coal Company go for its ultimate market? A. Some of it goes all along our line from the Kingston collieries to the two terminals. Some of it, I presume, is shipped West. I do not know exactly where it does go after it leaves Scranton.

Q. Does the railroad get a higher profit out of the coal it sells at line points or the coal it sells here at New York harbor? A. I do not know what they get for the coal along the line or what they get for it at New York. All I know is what I pay for my coal; that is all I can tell you. I do not know what they get for the coal.

Q. You do not know what the result of it is when it is resold after you purchase it? A. I do not know. I know nothing about the selling of the coal. All I do is to mine it and get it in the car, and that keeps me busy.

Q. The Kingston Coal Company sells some of its own coal, chiefly along the line of the Delaware, Lackawanna and Western? A. Yes, sir.

Q. Does it sell any at tide here in New York? A. Not as I know of.

Q. Is any of the coal purchased by the Delaware, Lackawanna and Western from the Kingston Coal Company re-sold by the railroad at line points, or do you know? A. I do not know who sells the coal, other than it is turned over to our agents.

Q. Do you know anything about royalties paid in that region where your line is located? A. They vary.

Q. Give us some idea of what they are. A. They run from eight cents a ton up to about fifty.

Q. The eight cents is for the smaller sizes? A. Up to fifty cents for the prepared sizes.

Q. You mean that, if a man has a tract of coal land, that somebody would take it and pay him fifty cents for all the coal he gets out of it for the prepared sizes and then running down to eight for the smallest? A. Yes.

Q. Therefore, if a man owned a colliery and mined it himself and made less than that amount per ton on it, he would be losing money, would he not? A. Naturally.

Q. Do you know anything about the way the accounts of the coal companies are kept, whether any depreciation is allowed for the coal taken out? A. I know nothing whatever about our accounts. It is all kept separately.

Q. How about this royalty thing? How many sizes of coal are there below prepared sizes? A. There is Pea coal; Buckwheat coal, Rice coal and Barley coal; four sizes.

Q. For the prepared sizes you say the prevailing royalty is fifty cents a ton? A. That is the present prevailing rate of royalty, fifty cents.

Q. For these smaller than prepared sizes, gives us the prevailing rate of royalty on each. A. Say Pea coal would be thirty cents; say that Buckwheat coal would be about twenty cents; Rice coal about fifteen, Barley about eight—five to eight. I cannot tell you the exact rates, you know; they all vary. Sometimes you do not get any two leases alike.

Q. Have the Delaware, Lackawanna and Western Railroad any leases which are operated by others on an agreement to pay fifty cents a ton royalty on prepared sizes of coal? A. Has the Delaware, Lackawanna and Western leases with other people that are paying the Delaware, Lackawanna and Western other than fifty cents?

Q. No; paying them fifty cents. A. Other than the North End Coal Company, you say?

Q. No, I mean anybody. A. Oh, yes; they have leases they are getting fifty cents a ton under.

Q. Which ones are they? A. I think the North End pays them fifty cents; the George Lee pays them fifty cents.

Q. When were those leases made? A. The lease of the North End Coal Company was made, the last lease, was made in 1907, and the George F. Lee was made in 1907 also, I think. The North End was made in 1906 and the George F. Lee about 1907.

Q. Those leases, I presume, all contain a provision that the coal shall be transported over the rails of the Delaware,

Lackwanna and Western? A. I do not know as those particular leases have any clause in to that effect. It was with that understanding that the coal was leased. It may have been verbal. I do not recall whether there was a paragraph to that effect in any of the leases or not.

Counsel for the Government read in evidence the following provisions in the lease dated June 20th, 1901, between the Delaware, Lackawanna and Western Railroad Company as lessor and George F. Lee as lessee (subsequently assigned to the George F. Lee Coal Company):—

"First. Said party of the second part hereby agrees to pay the said party of the first part in currency at the office of the said party of the first part in the City of Scranton, Pennsylvania, for the coal obtained under this indenture at the rate and price of forty cents per ton as mined, prepared and loaded into cars for transportation to market, for each and every ton of 2240 pounds of coal mined and removed from the herein demised premises, above the size known as pea coal, and, subject to the provisions hereinafter contained, to pay for ten thousand tons above the size known as pea coal per annum from the twentieth day of October A. D. 1901, and for the same quantity annually thereafter during the continuance of this indenture, which annual quantity shall be paid for in equal monthly installments on or before the twentieth day of each and every month, the first payment to be made on the twentieth day of October, 1901; and for such coal as will pass over a screen of seven-sixteenths of an inch square mesh, and through a screen of three-quarters of an inch square mesh and known as pea coal, he shall pay the price of twenty cents per ton of 2240 pounds and for such coal as will pass over a screen of one-fourth inch square mesh and through a screen of seven-sixteenths of an inch square mesh, and known as buckwheat No. 1 coal, and also for the size known as buckwheat No. 2 coal, he shall pay the sum or price of ten cents per ton of 2240 pounds, and for such coal known as buckwheat No. 3 or rice coal, he shall pay the sum or price of five cents per ton of 2240 pounds.

"The payments so to be made for pea coal, buckwheat No. 1, 2 and 3 coal, shall be made before the twentieth day of the month succeeding the month during which the said pea, buckwheat Nos. 1, 2 and 3 coal shall have been mined."

Counsel for the Government also read in evidence the following provisions from the lease dated May 1st, 1907, between the Delaware, Lackawanna and Western Railroad Company as lessor and the George F. Lee Coal Company:—

"To have and to hold the said demised premises (except as hereinafter excepted and reserved and subject to the conditions hereinafter set forth) under the said Coal Company, its successors and assigns, yielding and paying therefor during the continuance of this lease to the said Railroad Company in manner and form as follows to wit:

"First. For all coal above the size of pea coal, fifty-three cents per ton as mined, prepared and loaded into the cars for transportation to market and to pay for ten thousand tons of coal above the size known as pea coal per annum from the first day of May, 1907, and for the same quantity annually thereafter during the continuance of this indenture, which annual quantity shall be paid for in equal monthly installments on or before the twentieth day of each and every month, whether or not the coal was mined, the first payment to be made on the twentieth day of June, 1907; and for such coal as will pass over a screen of seven-sixteenths of an inch square mesh and through a screen of three-quarters of an inch square mesh, and known as pea coal, shall pay the sum of thirty-four cents per ton and for such coal as will pass over a screen of one-fourth of an inch square mesh and through a screen of seven-sixteenths of an inch square mesh, known as buckwheat coal, it shall pay the sum of twenty-five cents per ton, and for rice coal sixteen cents per ton and for barley and all sizes below barley, the sum of twelve cents per ton.

"Second. Payment for pea, buckwheat, rice, barley and sizes below barley shall be made on the twentieth day

of each and every month for all coal of those sizes mined, shipped or sold by the said Coal Company during the preceding month, and all coal not marketed and deposited upon the surface shall be and remain the property of the said Railroad Company."

"Twelfth. Said Coal Company shall pay all taxes on the mining improvements, together with the local and State taxes on coal mined and unmined, insofar as the same are chargeable to the said Railroad Company."

Counsel for the Delaware, Lackawanna and Western Railroad Company read from the last mentioned lease, dated May 1st, 1907, the following provision:—

"Fifteenth. It is further understood and agreed that all coal mined and prepared for market under this indenture shall be loaded into cars of the said Railroad Company and delivered to the said Railroad Company at the breaker or breakers of the said Coal Company and sold to the said Railroad Company at the price and under the conditions and stipulations as contained in that certain agreement between the said Coal Company and the said Railroad Company known as the '65 per cent Contract' and dated the first day of March, 1903, and the said coal is to be sold and purchased in accordance with the stipulations of said agreement. Said agreement is made a part of this indenture."

Counsel for the railroad company further read from the lease between the Delaware, Lackawanna and Western Railroad Company and George F. Lee, dated June 20th, 1901, the twelfth provision thereof, as follows:—

"The said party of the second part hereby agrees to load into cars of the said party of the first part for transportation to market, all the coal mined and removed by and from the lands herein demised, and so often as the said party of the first part shall furnish such cars, and will receive therefor such percentage of the selling price of such coal at tidewater as shall be paid at the time then being by said party of the first part to like shippers; provided, that the tonnage so loaded as aforesaid shall in all cases equal one-third of the total tonnage of the colliery where the said coal shall be prepared."

Re-direct examination.

By MR. SEAGER:

Q. Government counsel asked you whether the price paid by the railroad company for coal purchased of the Kingston Coal Company since the expiration of its contract was the same as formerly, and you answered yes to that question. I suppose that contract which expired in 1907 existed over a period of years, did it not? A. Oh, yes, 1878. I think it expired a couple of times since it was first made, until it expired in 1906 or 1907.

Q. The prices paid for that coal from the time the contract was first made with the Kingston Coal Company have varied, have they not? A. Yes; but the last contract that was made with the Kingston Coal Company, or, in other words, the coal that we were purchasing from the Kingston Coal Company at the time that the contract expired and the coal we are purchasing from them now, is about at the same price.

Q. That was 1907? A. 1907. In other words, the coal we purchase in 1909 is about the same price we paid for it in 1907.

Q. That contract with the Kingston Coal Company evidently was not for the life of the mine? A. No, sir.

Q. And there are others that are not for the life of the mine? A. Yes, sir.

Q. Mention those which are not. A. I think the George F. Lee contract is not for the life of the mine, and the Pancoast contract was not for the life of the mine.

Q. That was for a particular number of tons of coal? A. Yes. The William Connell contract was not for the life of the mines.

Q. That called for a particular stated number of tons less than the amount of coal in the mine? A. Yes.

Q. You have stated the amounts of royalties commonly paid in the coal business. Of what time do you speak? A. I am speaking of the present time.

Q. How long have the royalties which you speak of been paid, that is, royalties of a like amount? How far back?

A. Not very long; not before the last two or three years, since the price of coal has advanced. I desire to say also that this fifty cents a ton for prepared sizes, that means the very best character of coal in thickness and quality.

Q. The thickness of seam, in other words, makes a vast difference in the amount of royalty? A. Yes, sir. Coal leases are made at the present time in which the royalties are much lower than fifty cents.

Q. On account of what? A. The character and thickness of the vein to be mined.

Q. State whether or not those royalties have increased in recent years? A. Oh, yes.

Q. Since when has there been a noticeable increase? A. In the last five or six years.

Q. You answered Mr. McReynolds that no deductions were made, as a usual thing, from the mine weights. How about deductions for snow and ice? A. There are deductions made for snow and ice at all collieries, and for water, where coal is being washed.

At 12.40 P. M. a recess was taken until 2 P. M.

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2 P. M.

Present.—The Examiner. Messrs. McReynolds, Todd, Seager and Moot.

It is agreed that it may be taken as testified to by witnesses, or attested by documents, subject to objection as to materiality, relevancy and competency as to substance, but not as to mode or method of proof:—

That, subsequent to the consolidation in the one corporation of the Liggett's Gap Railroad Company and the Delaware and Cobb's Gap Railroad Company, under the name of the Delaware, Lackawanna and Western Railroad Company, pursuant to an Act of the General Assembly of the State of Pennsylvania approved March 11th, 1853, the following Acts of the said Assembly were passed and became law and the following mergers took place:—

1. Act of the General Assembly of the State of Pennsylvania approved March 22d, 1855, which provided, among other things, "that it shall and may be lawful for the said Delaware, Lackawanna & Western Railroad Company to increase the quantity of their coal lands to an amount not exceeding (with those already acquired) two thousand acres, and to hold said coal lands and to mine, purchase, transport and vend coal."

2. Act of the General Assembly of the State of Pennsylvania approved April 19, 1856, providing for the incorporation of the Northwestern Coal and Iron Company It is provided by said Act that said company "shall have power to take and hold lands and real estate on lease and in fee simple in Butler County and in Armstrong County, and to mine, prepare for market, sell and dispose of the Cannel and bituminous coal, iron ores, fire clay and other minerals on their lands and to manufacture iron on other products of their minerals or lands and to convey said minerals or the products thereof to market; with power to grant leases of the said lands or any portion thereof, provided, that the amount of land owned by said company shall not at any time in the aggregate exceed 3000 acres * * * ."

"SECTION 2. Said company is hereby declared and made capable in law * * * to hold and convey said real estate and personal property as may be necessary to promote the object of the corporation and to sell and dispose of the products of their lands; and it shall be lawful for the said company to construct such lateral or branch railroads, not exceeding 20 miles, as may be necessary to connect any of their land with the Northwestern or any other railroad within this Commonwealth * * * ."

3. Act approved April 19, 1856. "Section 1. That the name of the Northwestern Coal and Iron Company in Butler and Armstrong Counties shall hereafter be known by the name of 'Buffalo Coal and Iron Company.'"

4. Act approved January 26, 1860. "Section 1. The Buffalo Coal and Iron Company * * * may be organized and located in the County of Luzerne instead of the

counties mentioned in the original Act, and shall enjoy all the rights and privileges in that county which were authorized to be enjoyed in the counties named in the Act approved 19th April, 1856, to which this is a supplement." By the same Act, Section 1, the name of the corporation was changed to the Continental Coal Company.

5. Act approved March 13, 1865. The corporate name of the Continental Coal Company was changed to the Keyser Valley Railroad Company. Said Act provided as follows, among other things: "Section 1. The said company shall have, use, exercise and possess all the property, rights, privileges, powers and franchises to which they are now by law entitled and be subject to the same duties and liabilities * * * ."

On November 9, 1865, the Keyser Valley Railroad Company merged into the Delaware, Lackawanna and Western Railroad Company, under an Act relating to railroad companies, passed May 16, 1861. The agreement of merger and certificates of the merging companies as to the merger were filed in the office of the Secretary of the Commonwealth, December 27, 1865. The said certificates and joint agreement for the consolidation and merger of the two companies named, provided, among other things, as follows: "That the said companies shall be consolidated and that the said Keyser Valley Railroad Company shall be merged into the Delaware, Lackawanna and Western Railroad Company, and that all the property, rights, franchises, and privileges now by law vested in the said, the Keyser Valley Railroad Company, shall and the same are hereby agreed, on the terms and conditions hereinafter set forth, to be sold, assigned, conveyed and transferred to, consolidated with and merged into the said, the Delaware, Lackawanna and Western Railroad Company, and that the said corporations and companies shall be and they are hereby agreed to be, upon the terms and conditions hereinafter set forth, consolidated and made one corporation under the name, style and title of the Delaware, Lackawanna and Western Railroad Company, possessing all the

rights, powers, privileges, franchises and property, real, personal and mixed, which are now by law conferred upon or vested in, or which belong to both companies."

The terms under which the merger was made provided that, for every share of stock held in the Keyser Valley Railroad Company there should be issued of the Delaware, Lackawanna and Western Railroad stock one share.

6. The Scranton Coal Company was incorporated October 15, 1854, under an Act of Assembly of the State of Pennsylvania approved April 7, 1849, entitled "An act to encourage manufacturing operations in this Commonwealth," and the supplements thereto. In the certificate of incorporation filed by the Scranton Coal Company, it is provided, "That the objects for which the said company has been formed are the mining of coal and preparing for market the produce of their mines and vending the same."

The Act approved April 7, 1849, above referred to, provides as follows: "Section 3. When these certificates shall have been recorded and filed as aforesaid, the persons who shall have signed and acknowledged the same and their successors shall * * * be a body politic and incorporate in fact and in law by the name stated in such certificate * * * and shall, by their corporate name, be capable in law of purchasing, holding and conveying any real or personal estate whatever, necessary or convenient to enable the said company to carry on the business or operation named in such certificate not exceeding two thousand acres."

7. Steuben Coal Company, incorporated May 18, 1865, under an Act of the General Assembly of the State of Pennsylvania approved that date, in and by which it was provided, among other things, as follows: "Section 4. That the said corporation, by the name aforesaid, may purchase, lease and hold coal and other lands in the County of Luzerne not exceeding at any one time three thousand acres, with power to mortgage, sell, lease or otherwise dispose of the same or any part thereof; and the capital of the said company may be employed in purchasing, min-

ing, vending and transporting to market coal and other minerals."

"Section 7. That the said corporation * * * may also have an office for the sale of coal and transaction of business in the City of Philadelphia or New York."

8. Act of the General Assembly of the State of Pennsylvania approved April 11, 1867, authorized the Steuben Coal Company to purchase "all the rights, powers, privileges and property, real, personal and mixed, of the Scranton Coal Company and to consolidate and merge the said Scranton Coal Company with and into the said Steuben Coal Company, so that the said Steuben Coal Company may hold, use and enjoy all the property of the said Scranton Coal Company and the rights, privileges and franchises of the said Scranton Coal Company, in so far as they relate to the purchase and holding of lands, hereditaments and tenements, in addition to the rights, privileges and franchises now held and enjoyed by the said Steuben Coal Company, and so that the said Steuben Coal Company, by virtue of said purchase, consolidation and merger, and the provisions of this act, shall have authority to purchase, lease and hold coal or other lands in the County of Luzerne, not exceeding at one time two thousand acres, in addition to the quantity of land hereby authorized to be purchased and held, in addition to the quantity of land which the said Steuben Coal Company was authorized to purchase, lease and hold under and by virtue of the original charter of the Steuben Coal Company * * *."

Certificates of ratification by the Scranton Coal Company and also by the Steuben Coal Company of the Act above quoted, were filed with the Secretary of the State of Pennsylvania, October 9, 1867.

The certificate of the Scranton Coal Company provided, among other things, as follows: "Now we, the subscribers hereto, being all the holders of all the shares of stock issued by the said Scranton Coal Company, do hereby consent in writing to the provisions of the said Act of Assembly and do hereby * * * ratify and re-

quest the sale by the said Scranton Coal Company to the said Steuben Coal Company of all the rights, powers, privileges, franchises and property, real, personal and mixed, of the said Scranton Coal Company and do hereby consent to consolidate and merge the said Scranton Coal Company * * * with and into the said Steuben Coal Company and do hereby authorize, consent to and request the conveyance to be made by the said Scranton Coal Company of all its property, real, personal and mixed, and all its rights, powers, privileges and franchises to the said Steuben Coal Company."

9. The Granby Coal Company, incorporated under an Act of the General Assembly of the State of Pennsylvania approved April 15, 1867, which, among other things, provided as follows: "Section 4. That the said corporation, by the name aforesaid, may purchase, lease and hold coal lands in the County of Luzerne, not exceeding at any one time five thousand acres, with power to mortgage, sell, lease or otherwise dispose of the same or any part thereof; and the capital of the said company may be employed in purchasing, mining, vending and transporting to market coal and other minerals * * * ."

Section 11, same act: "That it shall be lawful for said company to construct, use and operate a railroad or railroads not exceeding, for any one of said roads, ten miles in length, from any part of their lines, to connect with any other railroad or railroads or canal in the said County of Luzerne."

10. Nanticoke Coal and Iron Company, incorporated under Act of General Assembly of the State of Pennsylvania approved April 13, 1864, which, among other things, provided as follows: "Section 4. That the said corporation, by the name aforesaid, may purchase, lease and hold coal land in the County of Luzerne not exceeding at any one time five thousand acres, with power to mortgage, sell, lease or otherwise dispose of the same or any part thereof; and the capital of the said company may be employed in purchasing, mining, vending and transporting to market coal and other minerals * * * ."

On June 1, 1868, under general acts of the General Assembly of the State of Pennsylvania entitled respectively "An act relating to Railroad Companies," passed May 16, 1861, and "An act aut' orizing merger and consolidation of coal companies," approved April 13, 1868, the above mentioned Steuben Coal Company and the Granby Coal Company were consolidated and merged into the Nanticoke Coal and Iron Company. The certificate and joint agreement for the consolidation and merger of the Steuben Coal Company with and into the Nanticoke Coal and Iron Company, filed in the office of the Secretary of the Commonwealth August 31, 1868, provided, among other things, as follows: " * * * that the said, the Steuben Coal Company, shall be merged into the said, the Nanticoke Coal and Iron Company, and that all the property, rights, franchises and privileges now by law vested in the said Steuben Coal Company shall and the same are hereby agreed, on the terms and conditions hereinafter set forth, to be sold, assigned, conveyed and transferred to, consolidated with and merged into the said, the Nanticoke Coal and Iron Company, and that the said companies and corporations shall be * * * consolidated and made one corporation * * * possessing all the rights, powers, privileges, franchises and property, real, personal and mixed, which are now by law conferred upon or vested in, or which belong to both companies."

The certificate and joint agreement for the consolidation and merger of the Granby Coal Company with and into the Nanticoke Coal and Iron Company, filed with the Secretary of the Commonwealth August 31, 1868, provided, among other things, as follows:" * * * that the said, the Granby Coal Company, shall be merged into the said, the Nanticoke Coal and Iron Company, and that all the property, rights, franchises and privileges now by law vested in the said Granby Coal Company shall and the same are hereby agreed, on the terms and conditions hereinafter set forth, to be sold, assigned, conveyed and transferred to, consolidated with and merged into the said the Nanticoke Coal and Iron Company, and that the said companies

and corporations shall be * * * consolidated and made one corporation * * * possessing all the rights, powers, privileges, franchises and property, real, personal and mixed, which are now by law conferred upon or vested in, or which belong to both companies."

Under general Acts of the Legislature of the State of Pennsylvania entitled "An act relating to Railroad Companies," passed May 16, 1861, and the supplements thereto, and a further Act entitled "An Act authorizing the merger and consolidation of Coal Companies, etc." approved April 13, 1868, the Nanticoke Coal and Iron Company was consolidated and merged into the Delaware, Lackawanna and Western Railroad Company. The joint agreement between the merging companies, dated June 23, 1870; together with the certificate of the said companies, were filed in the office of the Secretary of the Commonwealth on August 12, 1870. The said certificates and joint agreement filed as aforesaid provide, among other things, as follows: "* * * that the said companies shall be consolidated, that the said, the Nanticoke Coal and Iron Company, shall be merged into the said, the Delaware, Lackawanna and Western Railroad Company, and that all the property, rights, franchises and privileges now by law vested in the said, the Nanticoke Coal and Iron Company, shall and the same are hereby agreed, upon the terms and conditions hereinafter set forth, to be sold, assigned, conveyed and transferred to, consolidated with and merged into the said, the Delaware, Lackawanna and Western Railroad Company * * *."

Such certificates and joint agreement further provided: "The holders of the capital stock of the said, the Nanticoke Coal and Iron Company, shall respectively, upon the surrender of the certificates of stock by them held in the said last named company to the Treasurer of the said, the Delaware, Lackawanna and Western Railroad Company, receive therefor and in lieu thereof * * * a certificate of stock duly issued by the said, the Delaware, Lackawanna and Western Railroad Company, for the same amounts, dollar for dollar, as these certificates shall, as aforesaid surrendered, call for, represent and amount to * * *."

It is agreed that, subject to objection as to materiality, relevancy and competency, but not as to mode or method of proof, that Mr. Arthur C. Lamonte would testify as follows:—

1. That, at the time of the merger of the Scranton Coal Company into the Steuben Coal Company, the Scranton Coal Company was the owner in fee of eight hundred and eighteen and seven one-hundredths acres of coal lands in the anthracite producing area of Pennsylvania.

That, at the time of the merger of the Granby Coal Company into the Nanticoke Coal and Iron Company, the Granby Company was the owner in fee of one hundred and forty-eight and forty-three one-hundredths acres of coal lands in the anthracite producing area of Pennsylvania.

That, at the time of the merger of the Steuben Coal Company into the Nanticoke Coal and Iron Company, it was the owner in fee of one thousand, seven hundred and twelve and twenty-five one-hundredths acres of coal land in the anthracite producing area of Pennsylvania.

That, at the time of the merger of the Nanticoke Coal and Iron Company into the Delaware, Lackawanna and Western Railroad Company, beside the lands of the Steuben Coal Company and the Scranton Coal Company above mentioned, it was the owner in fee of four thousand, three hundred and thirteen and sixty-nine one-hundredths acres of coal lands in the anthracite producing area of Pennsylvania and was the holder by lease of two hundred and fifty-six and sixty one-hundredths additional acres of coal lands in said area.

That, by virtue of the various mergers hereinbefore mentioned, and conveyances executed and delivered in pursuance thereof, the Delaware, Lackawanna and Western Railroad Company acquired said coal lands.

2. That in Government Exhibit No. 70, page 151 of printed record, there are duplications of acreage of land stated to be held by the Delaware, Lackawanna and Western Railroad Company in the anthracite producing area of Pennsylvania, as follows:—

In the acreage stated to have been acquired between 1874 and 1896, the duplication amounts to.....	876 A.	109 P.
In the acreage stated to have been acquired since 1896, the duplication amounts to.....	707 A.	37.6 P.
Total duplication.....	1584 A. +	

The Delaware, Lackawanna and Western Railroad Company has also disposed of, by deed and lease, since 1896, of the acreage appearing in Government Exhibit No. 70, 133 37-100ths. acres. It has also forfeited leases since 1896 covering 432 acres and 33 perches of land included in Government Exhibit No. 70.

The total deduction from the grand total of acreage held, as appears in Government Exhibit No. 70, page 151, should be 2149 acres, 78.8 perches.

Deduction from statement of "portion of whole acquired since January 1, 1874, 9,369.94," as appears in Government Exhibit No. 70, should be "1584 acres."

At 3.45 P. M. adjourned until Tuesday, June 15th, 1909, at 10.30 A. M., at the Post Office Building, Philadelphia, Pa.

Meeting adjourned to Tuesday, June 15th, 1909, postponed until Wednesday, June 16th, 1909, at 10.30 A. M.

PHILADELPHIA, PA., Wednesday, June 16th, 1909.
10.30 o'clock A. M.

Present.—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. Hon. J. D. Campbell and Hon. Adelbert Moot, representing certain defendants.

GEORGE E. KIRKPATRICK, called on behalf of the Philadelphia and Reading Coal and Iron Company and the Erie Railroad Company, having been duly sworn, was examined as follows:—

By JUDGE MOOT:

Q. Please state your age and occupation. A. I am fifty-one and a half years old; my occupation in this connection is Superintendent of the Girard Estate.

Q. How long have you been Superintendent of the Girard Estate? A. For twenty-three and a half years.

Q. How long have you been connected with the administration of the Girard Trust, among others? A. Close to thirty-one years.

Q. Mr. Girard left a will by which he made the city of Philadelphia his residuary trustee, did he not? A. Trustee; yes, sir.

Q. And he provided in that will for the establishment and maintenance of Girard College for the education of young men? A. That is right.

Q. That college had not been established, if I understand it correctly, at the time of his death, had it? A. No.

Q. It was established how long after Mr. Girard's death? A. Mr. Girard's will provided for the erection of the necessary buildings for this purpose. Work upon the erection of these buildings began shortly after his death, I cannot say positively exactly how long, but three or four years probably, or, perhaps, earlier. The buildings were completed in 1848, and opened and occupied in the early part of 1848.

Q. There was an interregnum after his death before the

college was opened during which a contest, that we all know about, over his will took place, and in which the United States Supreme Court ultimately decided the question in favor of the city of Philadelphia? A. Yes, sir; that is right. The city's competency as a trustee was questioned, and the validity of the will, from the point of public policy, was brought in question, all of which was decided in favor of the trusteeship.

Q. And the college then was opened in 1848, you say? A. In 1848.

Q. Since that time Girard College has been maintained here in Philadelphia for the education of young men? A. Poor male white orphans, quoting the will.

Q. Those poor male white orphans, if I understand it correctly, are fed, clothed and educated at the expense of the Trust? A. Every expense, yes, in their bringing up.

Q. Those boys are taken from what localities, and at about what ages? A. With one exception, every boy admitted to Girard College was born in the State of Pennsylvania. A preference is given, under Mr. Girard's will, to boys who are born in the then city of Philadelphia, which is that portion of the present city of Philadelphia lying between Vine and South Streets, and between the river Delaware and the river Schuylkill, but the number of applicants from that district is practically exhausted on every admission, and a considerable number of boys from other portions of the State of Pennsylvania are then admitted. The order of admission is that of the applicants, so that a boy who is born in Pittsburgh has exactly the same chance of getting in as a boy who is born on the north side of Vine Street.

Q. At the present time you are educating and maintaining about how many young men in this college? A. The average number of pupils maintained in the year 1908 was fifteen hundred and thirty-one.

Q. Those young fellows come in at about what age, and are graduated at about what age? A. They are admitted between the ages of six and ten by prescription of Mr. Girard's will. They leave the college at ages running from

fifteen to, at the extreme, eighteen. Eighteen is the prescribed age for leaving. A boy who is bright gets through a year or two ahead of the prescribed time. A dull boy stays until the end, a boy exceedingly dull is turned out way back.

Q. Their education in Girard College that they get, if they graduate in due course, compares, if you know, how with the education that a boy gets in the City High School? A. A boy making a complete course in Girard College gets an education that is about on a level, in some respects a trifle better, with the boys in the highest grade of the grammar schools.

Q. They are fitted with a good education to go out and tackle the world alone? A. That is right.

Q. That is what you try to fit them for, as I understand it? A. Yes, sir.

Q. That is, to make their way in life? A. Yes, sir.

Q. And, generally speaking, they have shown the capacity to do that, have they? A. As a rule they have done very well.

Q. This Girard Trust that you superintend has come to have in it about how many millions of dollars? A. Its value is estimated to be about $35,000,000. It is difficult to get at the exact figures, because a large portion of it is real estate, of which there is no necessity or no accurate way of getting an exact value.

Q. Of that real estate about how many thousand acres consist of lands in what are sometimes called the Schuylkill coal regions? A. Approximately eighteen thousand acres. Eighteen thousand is a rough figure of the land in the coal region. It is not all coal land. It includes some land the surface of which has been appropriated by the Girard Water Company.

Q. Do you yourself know about how much of that eighteen thousand acres of land in the Schuylkill region is coal land? A. I cannot say accurately.

Q. The income derived from that coal land by way of royalties is treated in the administration of the Girard Trust as income, or as principal; which? A. The net in-

come from this coal property is treated as capital, or on the contrary, when the coal is gone, your capital is gone. The first use made of the gross income is to pay its own expenses. The net income comes in as part of the capital fund of the estate, and is invested.

Q. Can you tell us what the net income of the coal property was last year after paying the expenses of these properties from the gross income? A. The net income from the coal mining property in the year 1908 was $572,-061.03. That means the actual cash coming in, actually collected.

Q. That is for the calendar year? A. For the calendar year.

Q. That net income from that property, that is thus treated by the Trust as capital, is then invested somewhere else, I assume, by the Trust? A. It is invested in some manner to bring an income.

Q. Either in stocks or bonds, or something you are authorized to invest in? A. Yes, sir.

Q. Where does the entire income of the Girard Trust ultimately go? A. The net income of this Girard Trust to which you have been referring, goes entirely to the support and extension of the Girard College.

Q. About what does it cost a year now to maintain that college? A. Approximately $500,000. Actually in 1908, $514,044.60.

Q. Are you able to support, maintain and clothe that whole number of young men for that sum? A. Yes, sir.

Q. In the handling of this Trust, is the estate represented at all by anybody in the coal regions? A. The property of the estate in the coal regions is under the direct care of an engineer and agent.

Q. Who is that gentleman? A. Mr. Heeber S. Thompson. He is the engineer and agent of the Trust.

Q. And has been about how many years, if you can tell me. A. From examination, about thirty-five or thirty-six years. He was engaged in that capacity before I came into the office.

Q. Does he make an annual report of the condition

of the collieries and the coal properties, touching the administration of his office? A. He does.

Q. Is that in this annual report of the City Trust you have in your hands? A. It is added as an appendix to the report made by the Board of Directors of the City Trusts, in accordance with the Act of Assembly creating that board, which requires that board to report to the Legislature, to the Councils of the city of Philadelphia and to the Judges of the Courts of Common Pleas of this county.

Q. Annually? A. Annually.

Q. They have been doing that for about how many years? A. This is the thirty-ninth such report.

Q. Where does his last report that is published appear? A. It appears as Appendix B in this report, and is printed as pages 77 to 117 in the report of the Board of Directors of the City Trust for the year 1908.

Q. When Mr. Thompson's report comes into your office, I assume, as the Superintendent of this Trust, it comes into your hands? Is that correct? A. That is right.

Q. What do you do with it when it comes in to you? Do you have them looked over, examined and verified? A. It is studied carefully, looked over, the figures checked up, compared with similar figures, where we have got similar figures made from the records that are directly compiled in the central office.

Q. What do you say as to whether this report of Mr. Thompson, so far as it embraces figures that could be thus verified from your office, is correct, in your judgment? A. It is. I am confident that the figures are absolutely correct. So confident that we lean on them constantly without further checking.

Q. At my request you brought with you some leases of coal lands of collieries that you told me were typical of the leases of those coal lands generally, did you not? A. I did.

Q. State the dates and the names of the leases you brought with you. A. I selected a lease covering property which is now known as Hammond Colliery. The first

lease I have before me covering this property was made in the year 1869. I believe there were some small trifling leases prior to that time, but this is the first of the leases which practically begin the history of the mining of that property. This lease was for a term of fifteen years. The next one for the same property began January 1st, 1884, for fifteen years. The next one was at the expiration of that time, and began January 1st, 1899, now current.

Q. There was also a prior lease, if I understood you correctly, of this Hammond Colliery made about the year 1862, under which mining was commenced in 1863, that came down to the first lease you have given us this morning? A. I will have to ask you to put that question to the mining engineer.

Q. Take this first lease you have with you and read to the stenographer the provisions of that lease with reference, first, to the time it covers, and the parties. A. Fifteen years from the first day of January, 1869. The lessee in this case is James J. Connor.

Q. What is the provision with reference to the royalties to be paid and the amount of coal to be mined? A. The royalty to be paid for all coal sent away from the demised premises during the year 1869, twenty-five cents per ton. This coal to be such as is retained by the meshes of a one-inch screen. Ten cents per ton for coal to be retained by the meshes of a five-inch screen. Smaller size six cents per ton. The royalty on the larger size, which paid twenty-five cents per ton, advanced each year one cent per ton. In 1870 it was, therefore, twenty-six cents, in 1871 twenty-seven cents. The size which for the first year was ten cents per ton, became in 1870 ten and a half cents a ton, advancing one-half cent, and so on from year to year. The other size remained at the same figure.

Q. Is there any provision with reference to a minimum royalty, or minimum amount to be mined, and if so, what was that? A. There was a rental placed on the colliery of three thousand dollars a year, which, in effect, is a

minimum royalty, because that rental, when the royalty amounts to three thousand dollars, is charged back. If the royalty was three thousand and ten dollars, there would be no rental whatever charged.

Q. Is anything said in that particular lease about any minimum tonnage to be mined in a year? A. There is no minimum tonnage required, but it is implied in this way, in clause 5: "The lessees, when they sink a slope or shaft for mining coal in veins below the water level, shall sink the same at a point approved by the engineer of the lessor, of a size proper for a colliery producing at least fifty thousand tons of large coal a year, and so forth."

Q. Is there any provision in the lease, if they pay the $3000 to be paid, by which, if they do not mine the coal that particular year, they might mine it the next without paying any particular royalty on that, or do you not know? A. No, sir; each year stands on its own bottom.

Q. So that if they omitted to mine the coal, after paying that minimum rental, during the year for which that rental was paid, then they would be out so much? A. That is right.

Q. Is there any provision in that lease giving you, as the lessor, any control over the lessee as to the manner of mining or the question of what should be left, or what should not be left, or anything of that kind, unmined? A. The lease requires the mines to be worked in a proper manner, and gives to the lessor the right to enforce the working of those mines in a proper manner.

Q. Is there any provision in the lease with reference to reimbursing the lessee for sinking shafts or slopes, or making improvements at the mines, or were all those at the expense of the lessee? A. I cannot answer that question off-hand. In the early days it was customary to make certain allowances to lessees, but without reading this through carefully, I could not answer the question. But I know in the early days it was customary to make all sorts of allowances to your mine lessees, to make good to them expenses which they unexpectedly had to bear in operating a colliery. I can recollect in the early

days, if there was an excess of a small size of coal sent to market, an allowance was made for that, if there was a fault in the vein, an allowance was made for that, and probably others, but they are all that come to my mind at this moment.

Q. About how long ago, according to your recollection, without going into much detail, did that practice cease on the part of the Girard Estate? A. I should say thirty-five years ago.

Q. Is there any provision in the lease, if you can tell us, for ending the lease at the instance of the lessor if the lessee failed to comply with its provisions? A. This provides for a termination of the lease in the event of the failure by the lessee to keep the covenants contained in the agreement of lease. When I speak of the Hammond Colliery, I speak of the colliery now covered by our Hammond Colliery lease. In the early days it may have been a working of the mine at a different spot. My recollection runs that there were two collieries on what is now the Hammond lease. This particular agreement which I have here may not be the one that was called the Hammond at that time, but it is precisely similar in every respect to what that would be if there were another.

Q. Are you familiar enough to tell me whether this lease is typical of all the leases of that period of time made by your Trust? A. Yes, sir.

Q. Have you the right to make these leases for the estate of your own volition, or do they have to be submitted to some authority for its assent in some way? A. Mr. Girard in his will limited the power of his trustee to make a lease of his realty for a term exceeding five years. A term of five years for a colliery operation would be utterly impracticable. The matter was brought to the attention of the court by petition, and an order obtained at a time appropriate for making this lease of 1869, granting the privilege to make these colliery leases for terms of fifteen years, ten years in excess of the prescribed period allowed by Mr. Girard in his will, and, each time these leases have expired, the matter has again been

brought to the attention of the court, and authority to make another set of leases for a period of fifteen years obtained, and we are now running in the third of these fifteen year periods.

Q. That third lease of these fifteen year periods would expire when? A. December 31st, 1913, five years from the first of last January.

Q. So that all these leases of the Girard coal properties are of a similar character, for the given period, to the one of which you have been giving us the provisions here? A. They are.

Q. As to royalties are they similar? A. Yes, sir.

Q. Amounts the same? A. Yes, sir.

Q. And provisions for supervision and for termination? A. Yes, sir.

Q. Take the next lease that is typical of its period? A. The next lease began January 1st, 1884. It ran for a period of fifteen years. That was to the Philadelphia and Reading Coal and Iron Company.

Q. Give us the salient portions of that lease on these vital points I have asked about as you did from the other? A. The minimum royalty was, as before, $3000 per annum. During the first year of this lease, upon coal retained by a five-eighth inch mesh, forty cents per ton, coal which will pass through that five-eighth inch mesh fifteen cents per ton. Each subsequent year the coal retained by the five-eighth mesh had an increase royalty of one cent per ton, bringing it up to fifty-four cents in the last year of the lease. The requirements as to the capacity of the colliery are fixed at at least fifty thousand tons a year, and the colliery must be of a capacity sufficient to mine fifty thousand tons per annum. The requirements for supervision of the mining are similar, but more carefully worded, growing out of the experience of the previous fifteen years. So as to give the lessor more power to compel a thorough working of the property.

Q. And the exhaustion of the minable coal? A. The exhaustion of the marketable minable coal.

Q. There is a provision, I assume, for its determina-

tion in the event that the lessee does not comply? A. There is.

Q. You spoke of size of mesh in the first lease. As I understand it, the first size, the inch square, as I remember it, was what you call the larger size of coal? A. That coal that would pass over such a mesh.

Q. The next size that that gave was what is ordinarily called Chestnut coal? A. I cannot answer that question positively.

Q. Pass to the next lease of the Hammond Colliery. A. The next lease began January 1st, 1899, and runs for a term of fifteen years, and expires on December 31st, 1913. The rates of royalty, size one, which is coal which may be retained by a screen not more than seven-eighths of an inch in diameter, if the holes are round, or three-fourths of an inch space between the wires if the holes are square. That character of coal pays forty cents per ton through the entire time of the lease, not on a sliding scale as the two preceding leases. Size No. 2 is the coal which, having passed through the mesh prescribed for size No. 1, is retained by a screen, the mesh of which, if round, is nine-sixteenths of an inch, or, if square, one-half an inch, for which twenty-five cents per ton is paid. Size No. 3 is coal which, having passed through the larger screen is retained by a screen having a mesh round five-sixteenth of an inch, square one-quarter of an inch. Royalty ten cents per ton. Size No. 4 for coal which passing through the last described screen is still marketable, on which a royalty of five cents per ton is charged. These rates of royalty, however, were made subject to revision after the expiration of five years from the beginning of the lease, and, on the expiration of ten years from the beginning of the lease. The revision applies only to sizes 2, 3 and 4, and not to the size for which forty cents per ton royalty is charged. It reads, "It is, however, expressly agreed and understood between the parties hereto that upon all coal of sizes No. 2, No. 3 and No. 4 shipped from the demised premises subsequent to December 31st, 1903, an additional royalty shall be paid to the party of the first part, which additional royalty shall

be at the rate of one cent per ton for each five cents per ton the average of the circular or published prices at the breaker of such respective sizes of coal on the first day of each calendar month of the year 1903 shall exceed the average of the corresponding circular or published prices at the breaker on the first day of each calendar month of the year 1898; and further, that on coal of sizes No. 2, No. 3 and No. 4 shipped from the demised premises subsequent to December 31st, 1908, such additional royalty shall be at the rate of one cent per ton for each five cents per ton the average of the circular or published prices at the breaker of such respective sizes of coal on the first day of each calendar month of the year 1908 shall exceed the average of the corresponding circular or published prices at the breaker on the first day of each calendar month of the year 1898."

Q. As to the supervision of mining out the coal and termination or determination of the lease, does this lease contain a similar provision to the other leases? A. It does, requiring thorough modern management and working of the property leased.

Q. And if the lessee does not keep the covenants then he may be turned out? A. The lease is forfeited.

Q. This provision for increase on sizes 2, 3 and 4, has that resulted in any increase to your Trust? A. I must trust to memory now. The increased royalty collected in the sixth year, as compared with what a similar shipment under the royalties of the fifth year, would have been, showed an increase approximately of $150,000. Not in this lease, however, but in the entire shipment of the Girard Estate. I have not the knowledge as to this particular lease.

Q. That similar provision in the various leases? A. Yes, sir. In all the leases.

(The Government interposes objection to all the foregoing evidence, as being wholly irrelevant to the issues in this case, and puts counsel upon notice that they do not assent to the details with regard to these mining operations being put into the record.

Government's counsel interpose no objection to the use which has been made of the printed leases as to form, if the matter is otherwise competent.)

Cross examination.

By MR. MCREYNOLDS:

Q. The Girard Estate, as I understand you, owns about eighteen thousand acres of land in the anthracite coal region? A. Yes, sir.

Q. What use does it make of that land? A. The principal use is taking out of it of the coal, and shipping that to market. Certain portions of it are leased for farm lands. Certain other portions are used for water purposes, to supply water to the community and to our own collieries and neighboring collieries.

Q. You get an annual rental for your agricultural lands, and also for the part that is used by water companies? A. Yes, sir. The water company has condemned. It is our own water company. The annual rental that we get for the use of the surface in some cases, and house rentals and lot rentals for house purposes, and some for farm purposes is trifling, and, probably, if we should analyze it carefully, the cost of collection would be in excess of the amount collected.

Q. Coming to the anthracite coal properties themselves, you say they are utilized for the purpose of getting out coal for market? A. That is right.

Q. Does the estate mine that coal, or does it lease these lands? A. It leases the mining privileges to various corporations and individuals.

Q. On royalties? A. On royalties.

Q. Is all the anthracite coal land owned by the Girard Estate leased? A. We believe that all the anthracite coal land on which it is now practical to mine coal is leased.

Q. To whom is it leased? A. To various corporations and individuals. To the Philadelphia and Reading Coal and Iron Company, to the Lehigh Valley Coal Company, to the Susquehanna Coal Company, to the Thomas Coal Company, Madeira, Hill & Co., W. R. McTurk Coal Company, and others.

Q. The coal lands of the estate are leased principally to some railroad company or to some coal company con-

nected with one or the other railroad carriers, are they not? A. Yes, sir. My knowledge as to the connection is not clear, but to companies which are generally considered by the public to be connected.

Q. What is the Thomas Coal Company? A. That is Messrs. Madeira, Hill & Co., and George B. Newton & Co. It is the people who are connected with these companies. As far as my knowledge goes, that is not a coal carrying interest at all.

Q. Where do these coals taken out by that company go to market? A. They are brought down to Philadelphia, shipped wherever they get their orders. They may be shipped east. I have burned some of it here in Philadelphia myself.

Q. What railroad carries them? A. You will have to ask Mr. Thompson that question. I am pretty sure both railroads, but I am not positive.

Q. Where are the lands of the Girard Estate located? A. In Schuylkill and Columbia Counties.

Q. That is what is generally recognized as the Schuylkill region of the anthracite district, is it not? A. Yes, sir.

Q. What railroads reach them? A. The Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, and the Pennsylvania Railroad Company.

Q. When did the Girard Estate begin to lease its coal lands? A. In the early 60's. The first shipment noted in this report is in 1863.

Q. Were they leased then to individuals or to railroad coal companies? A. Individuals.

Q. When did the business of leasing these lands to companies connected with carriers begin? A. Assuming that the general information I have as to the connection between coal companies and carrying companies is correct, of which I have no knowledge—I think you had better postpone that question and ask the mining engineer.

Q. When was the first lease made to the Philadelphia and Reading Coal and Iron Company? A. In 1876.

Q. Since that time that company has leased more and

more of the lands belonging to the Girard Estate, has it not? A. Yes, sir.

Q. When was the first lease made by the Girard Estate to the Lehigh Valley Coal Company? A. In 1881.

Q. Since that time has the Lehigh Valley Company leased more and more of the lands belonging to the Girard Estate? A. About the same.

Q. When was the first lease made to the Susquehanna Coal Company? A. In 1899.

Q. The three companies which I have last named, all of which the record shows are directly or indirectly connected with coal carrying roads, commencing in 1876, and up to the present time, by lease have gradually acquired a control of the majority of the lands belonging to the Girard Estate? A. Yes, sir.

Q. Before these lands were leased to the railroad coal companies were they leased to individuals for operation? A. Largely; yes, sir. Some new collieries have been opened in recent years.

Q. The Girard Estate is the largest owner of anthracite coal lands in the Schuylkill region, excluding the Philadelphia and Reading Coal and Iron Company, is it not? A. I cannot answer that question positively. My impression is that it is, but I cannot answer positively.

Re-direct examination.

By JUDGE MOOT:

Q. This report of Mr. Thompson to you shows the names of the lessees, the collieries, and the periods of time for which the various collieries were leased to the various persons, firms or corporations named on page 92 and the following pages? A. Yes, sir. And the tonnage shipped each year in each case.

Q. On page 98 there is a statement of the present tenants and of the shipments and royalty for the year 1908, and the income of your Trust from the present tenants? A. Yes, sir.

Q. After you pass the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company and the Susquehanna Coal Company in that list, you come to the Thomas Coal Company, which you have already said you understood was not identified with any of the coal carrying railways; is that correct? A. That is correct.

Q. Then you come to W. R. McTurk Coal Company. That is not identified with the coal carrying railroads, as you understand it? A. Not identified, as I understand it.

Q. Then you come to Price, Glenn and O'Hearn. They are not identified with coal carrying railroads, as you understand? A. No, sir.

Q. Then you come to the Oxford Coal Company. That is not identified with the coal carrying railroads? A. I believe not. I am not so positive in that case.

Q. Then you come to the Preston, No. 2, culm banks? A. That is a mere license to dig out the bank, some coal; is not on the same basis as those other leases, and I believe it is to some individual.

Q. Independent, whoever they may be? A. Yes, sir.

Q. That last one is a small operation? A. Yes, sir.

Q. So that this statement on page 98 discloses at a glance the extent to which the Girard Estate has relations with any of the coal carrying coal companies and the extent to which it has relations with what may be called independent coal miners? A. That statement shows the exact condition in that respect during the year 1908.

Q. Production, royalty and all? A. Yes, sir.

Q. This preceding statement beginning at page 92, shows that at one time in the history of the Girard Colliery it was leased to the Philadelphia and Reading Coal and Iron Company? A. That is right.

Q. It also shows, when you follow it on succeeding pages, that there came a time when that colliery ceased to produce any coal? A. Yes, sir.

Q. It ceased to produce any coal in what year? A. It ceased its production during the year 1895. No production at all during 1896.

Q. From 1896 on down to what time was there no production? A. Sometime during the year 1897.

Q. And then who became the lessee of that colliery? A. There was a man named B. F. Bertolet made a lease, which was short-lived.

Q. From that time on to what time? A. The lease actually existed during the year 1898.

Q. Then who became the lessee of that colliery? A. W. R. McTurk Coal Company.

Q. And they are the lessees still? A. Yes, sir; they are the lessees still.

Q. Then that statement, in substance, means that there came a time when the Philadelphia and Reading Coal and Iron Company abandoned the Girard Colliery and ceased to produce coal there, and it remained an abandoned colliery for some years, and then your estate leased it first to an individual, and then to an independent coal operating company that is operating it yet? A. That is right.

HEBER S. THOMPSON, called on behalf of the Philadelphia and Reading Coal and Iron Company and the Erie Railroad Company, having been duly sworn, was examined as follows:—

By JUDGE MOOT:

Q. Please give your age, profession and occupation. A. On my next birthday, I will be sixty-nine. My profession is mining engineer; and my occupation is agent and engineer of the Girard Estate.

Q. How long have you been in the employ of the Girard Estate? A. As assistant, and as the engineer and agent, since the 1st of January, 1870.

Q. Mr. Kirkpatrick has told us that you are the agent and mining engineer of that estate, representing it; when did you become such? A. In 1874.

Q. You have represented it in that capacity ever since then? A. Yes.

Q. Representing the Girard Estate in that capacity, you live in the region, do you? A. Yes, sir. I live in

Pottsville, which is the capital of Schuylkill County, the county seat.

Q. And is near to these mines that are worked for the Girard Estate by their lessees? A. Yes.

Q. About how near? A. It is three-quarters of an hour's ride; about nine miles directly.

Q. So that you see those mines yourself, in some way or other, in the discharge of your duties, about how frequently? A. Sometimes every day, sometimes every two or three days.

Q. In the discharge of your duties representing the estate, just give as clear and practical a statement as you can, that will give us an idea of about what you do. A. To supervise the lands of the estate in Schuylkill and Columbia Counties as to the protection of the property and as to the collection of royalties and rents; and reporting, through Mr. Kirkpatrick, to the directors of the City Trusts.

Q. Are there any coal lands of the Girard Estate under your supervision not tributary to some one of these collieries that are in operation, that must yet be opened up by a new colliery, would you say? A. None that have coal undeveloped, to be of any value sufficient for mining purposes.

Q. There are anthracite coal lands containing coal which the estate owns, but not of a character to be minable at present prices and under present conditions; that is the idea? A. That is the idea. There are no lands available for mining purposes.

Q. Now we will take this Hammond Colliery, as to which we have been given the substance of the provisions of the lease. Do you supervise the taking out of coal in the colliery, the sinking of shafts or anything of that kind? A. Yes. We supervise all the work that is done for the opening of the coal, such as the opening of slopes, shafts, gangways and tunnels.

Q. Under the lease you have the right to say yes or no, if the lessee proposes anything if that kind? A. Yes.

Q. Although the work is done at the lessee's expense? A. And at their initiative, as a rule.

Q. Your power is simply the veto power? A. If anything should be done wrong.

Q. Suppose the question, by way of illustration, is up as to whether the Reading Coal and Iron Company shall or shall not mine coal in a vein, say, two feet thick. Who determines that and how is it settled, practically? A. As a rule, the lessee, in this case the Philadelphia and Reading Coal and Iron Company, mines all the coal he can obtain profitably. If the lessor sees that he is neglecting coal which ought to be mined, his attention is called to it and sometimes he proceeds immediately to mine that coal; and, if it involves too great an expense, it is sometimes not mined at the time. But, as a rule, the lessor, the Philadelphia and Reading Coal and Iron Company, mines all the coal it can up to the best modern practice, without involving it in loss.

Q. As it is done practically, taking that mine for an illustration, as a matter of fact do you from time to time, representing the Girard Estate, have, pleasantly but firmly, to insist that the lessee shall mine a little closer, take out some more coal? A. That is a process that is going on all the time, and the lessee, as a rule, is very glad to have suggestions made, because the work is done under subordinate officers and they are sometimes zealous to mine coal as cheaply as possible and the lessee is glad to have his attention called to coal which they may be in danger of overlooking.

Q. How is it at the present time as to the thickness of a seam that is ordinarily minable in these mines of the Girard Estate? About where is the point reached where you allow them to leave the coal behind without mining it? A. A seam of coal that contains good coal, that would have four feet of coal in it, would be mined nowadays without any hesitation. If there should be a seam of coal of three and a half feet in thickness, or of three feet in thickness, although I do not recall that we have any such particular thickness, it would be brought to the attention of the lessee and he probably would mine it.

Q. When you get below three feet in thickness in your

region, say from three feet down to two feet, will you give us as clear an idea as you can of your judgment and experience as to whether such veins are minable or, if not always minable, the conditions that determine whether they are minable or not? A. The character of the floor and roof; the rock strata below and above, have a great deal to do with it. All coal is more or less mixed with slate and refuse. If this small seam should be absolutely free from that, it would make a difference. Also the character of the top, whether it is soft or hard, and of the bottom; and the pitch of the measures, whether it is steep or whether it is flat. A gangway driven in a seam of that kind would have to be largely in the rock enclosing the seam in order to make an opening large enough for the passage of the mine cars.

Q. Then, in brief, if you have a vein of, say, two feet thick that had a pitch that would let the coal run down when an explosive was used on it, and that coal was reasonably pure and it did not involve too much pumping or too much rock work to get to it, even that sort of a vein might be minable now? A. It might be, in some cases.

Q. That would be about the limit now, would it? A. That would be about the limit.

Q. In other cases, if that vein was three feet thick, had considerable slate in it, was practically horizontal and was encased in rock above and below, requiring much rock work to get at it at all, it might be unminable? A. Might be impossible to get at it at all. It might be unminable, on account of the peculiar difficulties of mining it.

Q. These differing conditions that attend these differing seams in these different mines and different levels, determine very largely whether the expense is large or small and therefore determine largely whether these thinner veins can be mined or not? A. Yes—mined at a profit.

Q. You are pretty familiar with these leases that have been given to us this morning in their substance, because you have to act under them. There is not anything in any of those which requires the lessee to mine coal unless he

can mine it at some profit, is there? A. No. In the present leases, there are arbitration clauses.

Q. So that, if there is a dispute whether coal can be mined at a profit or not and the lessor insists it shall be taken out and the lessee insits it cannot be taken out at a profit, they can arbitrate; is that what you mean? A. The question as to whether a certain piece of coal shall be mined or not can be left to arbitration.

Q. And that is sometimes done, I assume? A. That is sometimes done.

Q. Although usually the mining engineer of the lessee and the mining engineer of the lessor meet and look at the thing as reasonable men and determine it without arbitration? A. Yes, that is generally the case.

Q. Has there been any change in the thickness of seam that is usually mined in this period of time that you have been connected with this work? A. Yes; a very great change.

Q. I wish you would give us as clear an idea as you can of about what thickness was considered minable when you began, what the changes have been that have taken place, what the causes for those changes have been and what point you have reached to-day. A. Thirty to forty years ago coal was abundant in the larger seams running from twenty to fifty feet in thickness, and was mined at the surface. Naturally, the lessees mined, where they were allowed to do so, the best coal and the easiest to mine. The Hammond Colliery, to which reference has been made, has a number of seams of coal covered by its lease, starting with the lowest workable seam, "Little Buck Mountain," as it is called, then the "Buck Mountain," then the "Seven Foot," then the "Mammoth" and then a spilt of the "Mammoth," Top Split of the "Mammoth," and then the "Four Foot" bed, as it is called; then the "Holmes" bed; then the "Primrose" bed, and then the "Orchard" bed and the "Diamond;" all these being seams varying in thickness and lying one over the other and all covered by the lease. The lessee, in his mining operations, goes down with a slope; one lift of one hundred yards, three hundred feet, then an-

other lift of one hundred yards, three hundred feet, then another lift of one hundred yards, three hundred feet. In this case he had gone down three lifts besides working off coal above the upper level, which could be opened by drifts or adits on the water level. Then, from the bottom of these lifts opened, he has driven tunnels at right angles to the pitch of the strata, north and south, and in the passage of those tunnels has opened up these different seams of coal. Then from the tunnels in these different seams of coal, he has driven gangways for a mile in each direction and, on those gangways, has opened out breasts and mined the coal from one level up to the other, and the other up to the next and the next up to the surface. That is the process of his mining operation.

Q. Beginning, as you say, in the early time with the best, largest and cheapest vein to work? A. Which was the vein lying on the surface, which could be opened by water level drifts.

Q. Have you any cut there which would illustrate, in the case of the Hammo d mine, what you have just been giving us as to how these veins lie? A. I have a lithographed section which I drew many years ago, and which Superintendent Kirkpatrick handed to me this morning at his office. It shows the operation of this colliery. This is a vertical section. This top line is the surface line, and, in making a section directly vertical, the various seams of coal are cut as shown. On this map, as I have indicated before, are shown the Little Buck Mountain, the Buck Mountain, the Seven Foot, the Mammoth, the Split of the Mammoth, the Four Foot, the Orchard, the Primrose and all those seams all the way up to the top. Here is the coal on the opposite side which shows the tunnels. This section happens to be taken right on the line of that shaft and that tunnel, but the slope and the tunnels on this side are similar to those on the other side, but do not happen to lie in the line of this section. The tunnels are shown by that white line cutting all the different seams.

Q. This plan that you have shown here, shows the high water line cutting these veins at a point about how

far below the surface? A. This lessee is now starting—has already started—to sink a vertical shaft, therefore he has mined the coal out by a slope on the dip of the vein.

Q. That is, he has followed a vein from the surface? A. Down to its different levels and opened up with gangways off of that, which involves some loss of coal to maintain the slope openings and other openings. Now he has started to sink a vertical shaft, starting in a ravine where he is permitted to get under the coal and go down in the rock underlying the Buck Mountain vein, and which he will sink twelve hundred feet vertically.

Q. He goes down twelve hundred feet with a shaft of about what size? A. With a shaft thirty-one feet one way by twelve feet eight inches the other way, containing four compartments, two for hoisting coal and two for ventilation and draining.

Q. That shaft will cost how much? A. Several hundred thousand dollars.

Q. When they get down twelve hundred feet, then what do they do? A. Then they drive tunnels from the bottom. They go a certain distance below the tunnel, for the collection of water, for a sump in which they will put their pumps for drainage, and then, fifty feet above that say, they will drive a tunnel through the solid rock until they cut the coal.

Q. So as to take it out? A. So as to take it out.

Q. That expense of putting that shaft down of several hundred thousand dollars is something not covered by your lease? A. No; that is an expenditure that the lessee makes. There is no contribution made to it by the owner of the lands. It will take him several years to complete that shaft.

Q. How long have they been putting it down already? A. They have only started this year.

Q. It will take about how long to finish it up? A. It will take about two years from this time.

Q. To get the shaft down? A. To get the shaft down.

Q. And then to run their tunnels from that shaft so as

to cut these veins will take some more time? A. Yes, take considerably more time, and then, after that, to open up the various gangways to the various seams will take more time. They are doing this in advance of the exhaustion of the lift of coal above them, so that the colliery will not run down when the source of supply is exhausted on the level above.

Q. To open that shaft and to open that tunnel and to open those breasts and chambers and all that, will take altogether about how many years' time, so that it will be in good working condition to take out coal on that new level? A. I suppose it would take fully three years.

Q. And this running of the tunnel—a mile or two will it be? A. No; the tunnel will only be perhaps from one to two thousand feet.

Q. Until it strikes the veins? A. Until it strikes all the veins. The gangway will be a mile in each direction, but they will have to open to the limit of the lease before they can take any coal.

Q. The tunnel and the gangways will also cost them money? A. Yes.

Q. And that is all, of course, at the expense of the lessee? A. Yes.

Q. That all has to be done, I suppose, subject to your veto power, so to speak? A. Yes. We always keep a watch on it all the time to see that nothing is done but what is best for the permanent interests of the property.

Q. To what is the fact due that originally they only mined these thicker seams and that now, and gradually during these thirty or forty years, they have been working down to the point where they are mining these thinner and more difficult seams? A. It is due to the exhaustion of the coal in the Mammoth seam, that is, the larger seams.

Q. In this Schuylkill region, do you know of any virgin coal territory, so to speak, that is left to be opened up by mines or shafts for new mines to be made hereafter? A. I do not think there is any, that is, undeveloped. There

is some on the edge of the coal measures that is not proven, that may be possibly developed as workable later.

Q. Have you any idea of what per cent. of the coal in the ground is in these thinner veins that are not now workable or minable? A. I could not say what proportion that is.

Q. It is a considerable amount, however? A. It is a very large amount, because you can see from that section, the larger vein that may be on top is a very small wedge, whereas the smaller seam which lies on the bottom runs under all the rest and covers the very much larger area.

(Cut marked "P. & R. and Erie Ex. No. 7 for Identification. June 16, 1909.")

Q. You make a report, as engineer, to the City Trusts, as we learned from Mr. Kirkpatrick? A. Yes, sir.

Q. I show you here a report, being Appendix B, "Report of the engineer of the Girard Estate in Schuylkill and Columbia Counties, Pennsylvania, for the year 1908," beginning at page 77 and running over to page 117, under date of December 31st, 1908. That is your last annual report? A. Yes, it is.

Q. That shows that the taxes of the Girard Estate on its real estate up there are $52,956.18? A. For that year.

Q. Those were mainly the taxes on these coal lands? A. The taxes on all these lands, the coal lands and the barren lands.

Q. But, I mean, the bulk of those taxes were, in fact, upon the coal lands? A. The bulk on the coal lands, because they are assessed at a very much higher valuation than the others, although they are not so large in area.

Q. About what is the area of the coal lands of the Girard Estate? A. A little over four thousand acres.

Q. Of those four thousand acres, about what proportion is covered by the various mining operations of these collieries, the names of which are given in your report? A. The whole of that is practically covered.

Q. In the remaining acreage which you have, constituting about eighteen thousand acres altogether, is there any coal, so far as you know, or is there some coal, but coal of a character not yet deemed minable? A. There is no coal

that has been developed to be workable, worth while to mine, to this date.

Q. There is coal, but it is not worth while to mine? A. There is sometimes a fold of the measures and the measures are inverted and the coal is squeezed out. The coal measures are there, but there is no coal proven of workable value, and, in one case, there is a small basin of coal underlying a reservoir.

Q. I find here a table on page 88 showing the quantity and percentage of Barley and Rice, Buckwheat, Pea and Chestnut coal, and coal larger than Chestnut, shipped from the Girard Estate each year from the opening of the first colliery, and that seems to show that that first colliery was opened in 1863 and that there have been shipments every year down to 1908, and it seems to show also the different years when the different sizes began to be shipped from these different collieries. That is a statement that you prepared? A. Yes.

Q. That is correct is it? A. That is correct.

(Judge Moot offered the statement in evidence. Marked "P. & R. and Erie Ex. No. 8. June 16, 1909.")

Q. I find, beginning page 89, a table showing quantity and percentage of each size of coal shipped each year from 1877 to 1908 inclusive, apparently; also page 90. Is that also a correct statement of the kinds and quantities shipped each year? A. That is correct.

(Statement offered in evidence by Judge Moot. Marked "P. & R. and Erie Ex. No. 9. June 16, 1909.")

Q. On page 91 I find a statement of the percentages of different sizes of coal sent to market by each colliery and washery in 1908. That was also prepared by you? A. Yes.

Q. And is a correct statement on that subject? A. It is.

(Statement offered in evidence by Judge Moot. Marked "P. & R. and Erie Ex. No. 10. June 16, 1909.")

Q. Beginning on page 92 and going on over to the bottom of page 97, I find a statement of the annual shipment to market of the several collieries on the Girard Estate, giving the name of the colliery, the lessee of the colliery for

the different periods of time, and the aggregate shipment of each colliery each year in tons and hundredweights. Did you also prepare that statement? A. I did.

Q. Is that a correct statement? A. That is correct.

(Statement offered in evidence by Judge Moot. Marked "P. & R. and Erie Ex. No. 11. June 16, 1909. Pages 92-97 inc.")

Q. Next I find on page 98 a statement showing the quantity of coal shipped and gross income derived from coal leases during the twelve months commencing January 1st, 1908, and ending December 31st, 1908. Did you prepare that statement also? A. I did.

(Statement offered in evidence by Judge Moot. Marked "P. & R. and Erie Ex. No. 12. June 16, 1909.")

Q. It appears from these statements to which I have called your attention that there was a time when the Philadelphia and Reading Coal and Iron Company stopped mining in the Girard Colliery for some years, and that colliery was finally leased to an individual and subsequently to an independent coal company, the McTurk Company, which apparently is the lessee now; you recall that, do you? A. Yes, sir.

Q. Why did the Philadelphia and Reading Coal and Iron Company abandon that lease, if you know? A. They abandoned it because they had mined out all the coal that was immediately available from their improvements and operations down to the synclinal axis of the basin. That is in that section, the southern one, at the southern end, where there is a wedge-shaped basin. It was a very expensive mine and unprofitable, and they desired to be released from the mining of that coal and they asked to be released, although a small percentage of the coal that was in the measures was taken out. The conditions were peculiar at that colliery. The basin was a narrow one, the dips of the measures very steep, and when the coal was taken out on the lower levels the rock overlying the vein fell in and came down to the chutes and blocked the chutes, and there was a large amount of water to be pumped, probably twenty tons of water for every ton of coal that was hoisted, and

the expense was so great that they desired to be released from their obligations, and they were released.

Q. And the colliery lay idle for some years? A. The colliery lay idle for some years, awaiting an improvement in the conditions of the coal trade and, perhaps, some person with more energy and more earnest desire for coal.

Q. In other words, at the then prevailing market prices—it appears that that abandonment occurred some time in 1895—at the then prevailing market prices, you recognized the fact that that coal could not be taken out profitably? A. Yes. That was a period of great depression for bituminous and anthracite coal, from that time until about the year 1899 or 1900.

Q. Had they any considerable investment in that mine in the way of improvements that they had to abandon and leave behind in the abandonment of the mine? A. They had a large investment.

Q. Approximately how large? A. It would be difficult for me to say. It must have been several hundred thousand dollars.

Q. There was no salvage in that for them? A. No. They would have to tear the breaker down. They might use some of the machinery, some of the pumps.

Q. As a matter of fact, what did they do? Just go away and leave the whole thing there on your hands? A. No; they tore down the breaker and took it away, and they took their column pipes out of the slopes and they took out their pumps. My recollection is that we required them to leave the rails in in some cases. I could hardly tell you that without going back; it is a number of years ago. I went into that mine on the day they said they had taken everything out that we allowed them to take, and went through the mine from one end to the other.

Q. They had to leave behind of course, the shafts and tunnels and chambers and breasts and everything of that kind? They could not take those? A. They could not take those, of course. They had cost them a great deal of money.

Q. They had to leave behind rails also? A. In some

cases they left their rails, but generally they took them out, because the rails left in mine water are eaten by the sulphuric acid and are worthless.

Q. Of this stuff that they took away, they got a salvage of approximately what per cent.? A. I could not tell you that. They used some of it at other operations.

Q. Would they get as high a salvage as twenty per cent. on the cost? A. I should suppose that; that is, for the machinery, not for the material used in the construction of the breaker.

Q. But approximately twenty per cent. for material and machinery and everything; would that be high enough to cover the salvage? A. I think that would be high enough to cover everything, if you took the breaker lumber and all.

Q. When that was ultimately leased by the Girard Estate to the new lessee, would the new lessee get the benefit of those shafts and tunnels and breasts and openings in mining coal from that property? A. Yes; but they would not always fit his operations, and the openings, breasts and tunnels would have to be changed somewhat to meet changed conditions.

Q. You spoke of the Philadelphia and Reading, which abandoned this operation. What is your observation of that company? Does it mine with energy and economy and with up-to-date methods, or is it a little lacking in some one or all of those things, so that an independent miner, like McTurk & Co., might do better than that company? A. I have been in the region ever since the organization of the Philadelphia and Reading Coal and Iron Company, and I have known all its officers and its management, and there may be occasionally here and there an individual that may be more thorough in his work, but it is only an occasional individual. The management and the thoroughness of work and the carefulness of detail exercised by the Philadelphia and Reading Coal and Iron Company is superior to the ordinary, individual management.

Q. What would you say as to whether that abandon-

ment of that particular colliery at the time they abandoned it was a case of poor judgment on their part, or poor management on their part? A. I would not say that it was a case of poor management. I would say that it was a case of abandonment on their part of a lease that was unprofitable, when they had more than enough other operations to furnish all the coal that they wanted.

Q. So that, when the new lessee finally began the operation again, the conditions had so changed that the new lessee could afford the operations? A. Yes, and also again make money to-day when he could not do anything but lose money at that time.

Q. Back in 1895, 1896 and 1897? A. Yes.

Q. The principal change that has occurred, as between 1894, 1895, 1896, 1897 and those years and to-day, has been the increased demand for coal and the increased price it brings? A. The growth of the anthracite production has been small as compared with the bituminous production.

Q. During those years? A. During those years and for a number of other years before that and since. Bituminous coal is the fuel of the world to-day. At that time it seemed as though anthracite would be, but anthracite is not used any longer in the manufacture of iron and steel, nor in steamboats and steamships. That market has been taken by the bituminous coal. Just to illustrate that, the production of bituminous coal in 1907 was about four hundred and fifty millions tons The production of anthracite coal in that year was about eighty-five millions tons, about twenty-two per cent. of the bituminous. Anthracite coal is limited in its area to a fraction of the area covered by bituminous coal in this country; but anthracite coal is a cleaner fuel, it is fuel that is considered a luxury and is appreciating and is bound to appreciate in value as the years go on. Then there is the fact that, in the great strike of seven years ago, the public sympathized with the strikers, and the price of coal went up, although the Philadelphia and Reading Coal and Iron Company endeavored to keep it from rising unduly; but

the price went up and, after the strike was over, the public was willing to pay a better price than it had been paying for anthracite coal, perhaps fifty cents a ton or more additional, and it has been paying that higher price ever since. The adjustment that was made at that time in the settlement of the miners' wages was made on a sliding scale of wages, which gave the miners a percentage of the increased price obtained by the sale of the coal. That has brought a condition of things into the anthracite region, a condition of prosperity, that was never known before. There is probably on deposit throughout the whole anthracite region twice as much money in the banks as there was ten years ago, and the prosperity has been, not only for the miner, but for the operator, and not only for them, but for professional men, lawyers, doctors and business men, merchants, and it is largely due to the recognized fact that the area of anthracite coal is limited and that it has reached very near its limit of greatest production at the present time.

MR. MCREYNOLDS:—I object to all this dissertation on economic conditions. It has not the slightest bearing on this case.

By JUDGE MOOT:

Q. Go ahead and finish your answer. A. I do not know of anything except in reply to your question as to changed conditions that have occurred in the mining of coal.

Q. The long and short of it all is that those changes which have occurred, which have brought about higher prices and a larger demand for the coal, have resulted, as I understand it, in steadier business and the diffused prosperity that comes from a very large number of people who have employment and are saving some of their money, making deposits in banks, better living and all the rest? A. Yes; there has been steadier work and larger production of anthracite coal. The last two years have been the two largest years of production in the history of the anthracite coal trade, the years 1907 and 1908.

Q. I observe from your tables which have been put in evidence that the smaller sizes are constantly increasing,

as I read those tables, speaking generally, in their percentage, and the larger sizes are decreasing in their percentage. To what is that change due? A. It is due to the demand of the market. Formerly those small sizes were thrown away as waste. Then it was the desire of all the coal producers to educate the community to know how to use those small sizes, and they have completed that education to such an extent that the demand is forcing them now to break down even the larger sizes, and, in the process of breaking down the lump and the broken and the Egg coal into Stove coal and Chestnut coal and Pea coal, there is a great deal of the smaller sizes made as by-products, which is saved and sent to market, which formerly was thrown into the waste bank.

Q. Of course, if they were able to sell that lump coal for manufacturing purposes or for steamboats, they would save this expense of breaking it down and of producing the smaller sizes, which sell at lower prices? A. Yes.

Q. So that in that particular they are the losers by that change? A. Yes. The prices that they receive for the smaller sizes are very much less than the prices they receive from the larger sizes, and the royalty that they pay us is smaller too, as far as that is concerned.

Q. For instance, I see by your table that back many, many years ago, back in 1879, 1881, 1882 and 1883, you were producing more than a million tons of sizes larger than Chestnut and that you have never produced anything like that tonnage since those years? A. Yes, sir.

MR. MCREYNOLDS:—Does that table refer to production or shipment?

By JUDGE MOOT:

Q. How is that? Does that table, and these tables, which speak of shipment rather than production, are they indicative of the proportion of the larger and smaller sizes actually produced, or, as a matter of fact, did the sizes shipped differ in amount and proportion, speaking largely, from the sizes produced? A. The difference bebetween shipment and production is the coal that is used in the operation of the collieries; and the coal that is used in the operation of the collieries is the coal for which

they receive the lowest price, the smaller sizes of coal. Consequently that production, which is ten or eleven per cent. of the shipment, would have to be added to the shipment. That coal is of the smaller size almost altogether.

Q. So that, if we were to make these tables tables of production rather than tables of shipment, the net effect would be to greatly increase the smaller sizes rather than the larger sizes? A. Almost altogether.

Q. In the first lease that was produced here by Mr. Kirkpatrick in your hearing this morning, there was a mesh an inch square mentioned, and then the only smaller size that was provided for was smaller than that. I take it that that smaller size was then known as Chestnut coal? A. There were three sizes, I think, under that. One was the large coal, which was Stove coal and Lump, Broken and all that; the large coal, they called it. Then the next size was Chestnut coal and the next size was Pea coal.

Q. In the very first lease, did they have any Pea coal or anything smaller than Chestnut? A. Yes, I think the first one had three sizes and the second one only two.

Q. Just look at your table there on page 88 and see if that refreshes your recollection. A. That first table shows two sizes only, the Chestnut coal and coal larger than Chestnut.

Q. That continued to be the division of your coal under your first lease down to 1867, did it not? A. It appears so from the table.

Q. But in 1867 Pea coal appeared also, did it not? A. Yes.

Q. Pea coal then was coal that would go through a mesh of what size? A. I will have to get that from the lease. All coal which would go through the mesh of a five-eighths of an inch screen.

Q. It appears from this table of yours on page 88 that in 1878 Buckwheat coal first began to appear. Buckwheat coal is coal that will go through what sort of mesh? A. Coal that would be retained by a five-sixteenths of an inch mesh. These meshes are pretty much the same now as they were at that date; at least, we have held them the same.

Q. It appears from this table that Buckwheat coal was not followed by any smaller size that you took note of until 1895, and in 1895 Rice, Barley and Culm first appear in your table. Rice, Barley and Culm would go through a mesh of what size? A. Through a mesh of five-sixteenths of an inch. Any coal that went through a mesh of five-sixteenths of an inch round or a quarter of an inch square, was sold as Rice and Barley at that time.

Cross examination.

By MR. MCREYNOLDS:

Q. You have said, I believe that the coal areas owned by the Girard Estate in the Susquehanna coal region amounted to about four thousand acres? A. Yes, sir, a little over that; probably forty-two hundred acres, something like that.

Q. What proportion of that four thousand acres is now leased to the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company and the Susquehanna Coal Company? A. I think they probably have from a half to three-quarters.

Q. Have they not three-quarters nearer than a half? A. I think likely they have.

Q. What proportion of the coal in the ground in this forty-two hundred acres owned by the Girard Estate is leased by these three coal companies which I have named? A. Fully three-quarters.

Q. Or more? A. Three-quarters or more.

Q. When you went into the coal regions forty years ago, what proportion of the coal lands of the Girard Estate were leased or controlled in any way by railroad companies or any coal company affiliated with a carrier? A. None.

Q. So that, during the last forty years, these coal carrying companies have gotten control of three-quarters or more of the coal that is owned by the Girard Estate; is that right? A. You put it in a way that I would hardly assent to. The control of them has fallen into their hands; I would not say they had gotten control.

Q. They have control? A. They have control, and it

has come into their hands through the necessities of the former lessees and through their poverty and their inability to make the collieries pay.

Q. Mr. Girard's will prevents the absolute sale of any of those coal lands, does it not? A. Yes.

Q. It was only as the result of an order of court that you are able to make a lease extending over periods as long as fifteen years? A. That is right.

Q. Do you know the relative production of the small sizes of coal in the Schuylkill region and in the other anthracite regions, where it is largest? A. No, I do not know. I know that the mining of coal in the Upper Region has always been considered more profitable coal mining as there the measures lie flatter and the coal is freer from impurities, from slate and bone.

Q. But you do not know about the relative relationship of the larger and smaller sizes in the three regions? A. No, I do not know.

Q. You have referred frequently to the report that you make concerning the operations of coal land on the Girard Estate, and your report was put in as Appendix B to the Board of Directors' report for 1909. On page 83 of that report, referring to the mining operations upon the Girard Estate, this appears: "The percentage of large and small coal freshly mined—excluding coal from culm banks—sent to market in the last nine years were as follows:

FRESH-MINED COAL EXCLUDING COAL FROM CULM BANKS.

	Large Coal, Chestnut and Larger, Per Cent.	Small Coal, Pea and Smaller, Per Cent.
1908	63.08	36.92
1907	63.97	36.03
1906	63.44	36.56
1905	62.99	37.01
1904	63.26	36.74
1903	66.75	33.25
1902	64.31	35.69
1901	63.46	36.54
1900	63.31	36.69"

Is that a correct statement? A. That is, so far as the collieries on the Girard Estate are concerned.

Q. That table shows that in 1903 the large sizes of coal amounted to 66.75 per cent. of the total. For the year 1900 they amounted to 63.31, and for the year 1908 they were 63.08 per cent., or, in other words, substantially the same percentage of large coal for the year 1900 and for the year 1908, with a larger percentage in the intermediate year of 1903; is that right? A. Yes.

Q. You testified, as I understood you, a while ago, to the effect that the larger sizes were constantly decreasing and the smaller sizes constantly increasing. How do you reconcile that with this table? A. I reconcile that by the statement that the necessities of the market from year to year control, to a considerable extent, the breaking down of the coal. The competition with bituminous coals comes in also. In some years the market will take but very little small coal. Then the culm banks are left lie and they do not mind them at all; not only that, but they will abstain from breaking down the larger sizes. At other times, the market will take the smaller sizes and, after making the Egg coal, they will take it out of the chutes and put it up in the breaker again and break it down into the smaller sizes. An exact explanation of why that should be in each particular case would be a matter which would require careful study of the circumstances and conditions in each particular year.

Q. But, as I understood, you left it to be inferred, if you did not expressly say it, that the amount of small coal sent to the market has been rapidly increasing and the amount of the larger sizes has been rapidly decreasing from year to year? A. That is true, taking it generally. This table on page 83 only covers a period of eight years.

JUDGE MOOT:—On pages 88, 89 and 90 are the tables to which I called his attention and with reference to which he made his answers, and now you are misquoting him.

THE WITNESS:—He is confining the statement to these eight years.

JUDGE MOOT:—I called attention to those tables and I asked only with reference to those tables.

MR. MCREYNOLDS:—And you left the impression in the record that the coal sent to market was rapidly increasing in the smaller sizes and decreasing in the large sizes.

JUDGE MOOT:—As shown by those tables.

By MR. MCREYNOLDS:

Q. The fact is that for a great many years Barley coal did not go to market at all? A. That is right.

Q. It was thrown in the culm bank, was it not? A. Yes.

Q. And Rice coal for a great many years did not go to market at all, did it? A. That is right.

Q. It was a waste product thrown over the culm bank? A. Yes.

Q. When those two grades of coal began to move to market, it necessarily followed that the proportion of the smaller sizes going to market was larger than it had been prior to that time, did it not? A. Yes.

Q. And that explains this apparent increase of smaller sizes to which you have testified, does it not? A. No, that would not explain it, because there are two tables there. This is the coal that is freshly mined that you are speaking of now.

Q. Sent to market? A. Sent to market, yes. There are some collieries that ship none of those small sizes at all, but when they do not, they utilize it under their boilers, and they prepare and send to market the larger coal while they burn this smaller stuff. I want to put in, on page 78, the statement that "thirty years ago forty-three per cent. of the anthracite production was Lump, Broken and Steamboat coal. To-day the proportion of these sizes is but fifteen per cent. of the production."

Q. Because they have broken it down? A. It is an illustration of the same point.

Q. A large amount of washery coal is now sent to market, is it not? A. Yes, at times, varying.

Q. That is nearly all small sizes, is it not? A. Yes.

Q. Putting that into the total shipments would naturally increase the percentage of the smaller sizes, would it not? A. Yes.

Q. When did this washery business begin to be a ma-

terial thing in the coal trade? A. Ten or fifteen years ago.

Q. What is the proportion now of the washery coal to the total that is sent to market? A. That is difficult to tell you offhand.

Q. Look on page 81 and see what it is for your estate? A. Two hundred and forty-seven thousand tons.

Q. The percentage is what I want? A. I do not see that I have the percentage figured out here.

Q. You can look at it and tell me approximately what it is. A. About fifteen per cent.

Q. That would naturally increase the percentage of small sizes, would it not? A. Surely.

Q. It does not show that the percentage of small sizes that came out of the mines or was prepared at the breakers increased one way or the other, does it? A. No.

Q. Look at your table on page 89. Prior to the year 1895 no Rice coal was sent into the market at all, was it? A. No.

Q. So it was all thrown out as waste stuff in the culm bank? A. Yes.

Q. In the year 1895 Rice coal began to be a merchantable product, did it not? A. Yes.

Q. And since that time all your Rice has been put into transportation? A. Not all of it.

Q. Substantially all? A. A great deal of it is burned, all they can. All the fuel they use is Rice.

Q. Prior to 1901 no Barley coal went into transportation, did it? A. No.

Q. It was all thrown on to the culm bank? A. Yes.

Q. Prior to the year 1902 you did not sell anything you call Culm for transportation; is that right? A. That is right.

Q. So, taking the tables as you have given them, there is nothing to indicate that the total output of the mines shows a smaller amount of prepared sizes in the last ten years, is there? A. In the last ten years, no, none appreciable; but, prior to that, a great deal.

Q. All this coal that formerly went into the culm bank

as waste material now has a value and yields a return to the producer? A. Some of it.

Q. All that is shipped does, does it not? A. All that is shipped, yes. There is a great deal of it that is waste yet.

Q. So the expenses of operating the mines and the profit from the mines now depends largely upon this material that was formerly absolute waste? A. Yes. It helps to offset the increased expenditures of deeper mining.

Q. Under these leases by the Girard Estate, who pays the taxes? A. The city of Philadelphia pays the taxes, excepting on the improvements. The lessees pay the taxes on the improvements on the breaker buildings and houses that they erect on the ground, but on the lands the city of Philadelphia pays the taxes.

Q. The lessee does not pay the taxes on the actual coal land? A. No.

Q. Coal has advanced very materially in price in the last ten years, has it not? A. Yes; ever since the settlement of the strike, six or seven years ago.

Q. How much has it advanced? A. I do not know, but I should imagine it has advanced at least fifty cents a ton.

Q. All around? A. Yes.

JUDGE MOOT:—I object to the question "all around."

THE WITNESS:—I would say on an average, then.

Re-direct examination.

By JUDGE MOOT:

Q. These small sizes are sold in competition with bituminous coal? A. Yes.

Q. There was not any increase appreciable in the price of bituminous coal either in 1899, 1900, 1902 or 1903, was there? A. I could hardly answer that question, because it does not belong to my business; but my impression is that there was.

Q. There was not any fifty cent increase on the smaller sizes, was there? A. Oh, no.

Q. When you spoke about a fifty cent increase all around, you had reference to all around on the larger sizes? A. Taking an average of all the coal put together.

Q. For the ten-year period or the seven-year period? A. Over what it had been ten years ago. Ten years ago, or about 1899, there was a great depression in the coal business. That is when we made our last leases, and we were almost persuaded that coal was not worth anything at all.

Q. The increased expense of mining you spoke of; that increased expense of mining has also taken place in these last ten years, largely? A. Yes; it is going on all the time.

Q. And briefly, but generally, is comprised in what items? A. It is comprised in the increased quantity of water to be pumped and in the increased height of pumping; the increase of pressure that comes from the greater depth; and the greater extent and area of the opening of mine workings and the greater difficulty of ventilation and timbering.

Q. And I suppose the largest items of it would be the increased cost of labor and the increased cost of material? A. That has come since the settlement of the strike.

Q. The last seven years? A. Yes.

Q. Material has also increased largely in that period? A. Yes, and the timber particularly has got to be a very serious item of expense. All the timber that was formerly available in the vicinity of the mines is exhausted and timber has to be brought now from long distances, from the South and West.

Q. These mines of the Girard Estate, are any of them in the process of exhaustion, of immediate exhaustion, I mean? A. I do not think there are any of them that will be exhausted in the next fifteen years.

Q. Have any of the mines of the Girard Estate been exhausted during your management? A. No.

Q. This Girard Colliery that was abandoned by the Philadelphia and Reading Coal and Iron Company and ultimately leased by this other lessee; about what per-

centage of coal, I mean minable coal, was in that mine when it was abandoned by the Philadelphia and Reading Coal and Iron Company? A. I made a careful estimate of that at that time. I have not the figures at hand, but my impression is that there was, ordinarily, about twenty-five per cent. of the total original contents of workable coal taken out, and that the three-quarters was still left in the mine. That would sound very badly, were it not for the fact that formerly it was considered a pretty fair estimate to consider that you could obtain fifty per cent. of the coal in the mine.

Q. Whereas now —— A. We expect to obtain more, a great deal more.

Q. About what per cent. do you expect to get now? A. It would be very difficult to say. In some cases we get it all, but that operation was a very difficult one on account of the steep pitches and the narrowness of the basins and the looseness of the measures.

Q. Take that particular mine; you would expect to get about what per cent. of the coal in it now? A. Of what is left now?

Q. Yes. A. Possibly, by modern operations, of strippings and very great depths, and better conducted methods of mining, we probably ought to get fifty per cent. of what is left.

Q. Something was said about these three coal companies connected with these railway carriers, having control of about three-quarters of the unmined coal of the Girard Estate. It appears that these leases expire, all of them, in 1913. Will not the Girard Estate then have control of all its coal? A. Yes, and they will have to make new terms with the lessees, new rates of royalties and perhaps new conditions.

Q. So that if any company, or any individual, can offer the Girard Estate better terms for its coal that is unmined than any one of those companies, then the Girard Estate will have to lease, of course, in the execution of its trust, to the people they can get the best terms from? A. Yes, if we were able to get a larger amount of money from

somebody else than from them, we would be under obligations to give it to somebody else.

Q. That is so of all those mines, whether they are individual mines or whether they are mines that are operated through these coal companies of the railway carriers? A. Yes.

Q. It takes, as a matter of fact, a very large capital to operate any one of those mines at the present day? A. Yes.

Q. Much larger than it formerly required? A. Very much larger than was formerly required

Q. How large, at the present time? A. About half a million to a million dollars is considered a proper capital for opening up a large colliery now.

Q. Thirty or forty years ago how much was considered sufficient? A. A man would go in the business if he had $25,000 to $50,000.

Q. You spoke of the fact that some of these individual operators had been either poor or had not been good managers, and that explained the disappearance of many of them. Can you give some instances in the case of the Girard Estate? A. Yes. The Bear Ridge Collieries were purchased from Myers, McCreary & Co., a former lessee, at an outright price, simply because they operated them until they thought they had gotten all the profit out of them they could. Then they sold them to the Reading. In other cases, the Reading loaned money. At the beginning of the operations of the Philadelphia and Reading Coal and Iron Company, Mr. Gowan was president. Mr. Gowan's intention was not, I believe, to operate the collieries by the company itself, but to lease them; but he loaned money. He loaned money to parties who were in the iron business; that is, the company did. He loaned money to the collieries; he loaned money to the lessees of Hammond Colliery, and he loaned money to the lessees of Girard Colliery, and in both of those cases, I think, the collieries came into the hands of the Philadelphia and Reading Coal and Iron Company because they were not

able to succeed and they allowed the colliery to go for the mortgages.

Q. Does the fact that the veins that are mined now are smaller have anything to do with the production of smaller sizes of coal, as to whether the percentage is larger or smaller? A. I do not think it does.

Q. You think the larger production of smaller sizes of coal is due mainly to what fact? A. To the demand of the market.

(At 1.40 P. M. a recess was taken until 2.45 P. M.)

2.45 P. M.

Present:—The Examiner. Messrs. McReynolds, Todd and Moot, of counsel.

(Adjourned to meet at the Old Astor House, New York city, Thursday, June 17th, 1909, at 10.30 A. M.)

Meeting held at the Astor House, New York, Thursday, June 17th, 1909, at 10.30 o'clock A. M.

Present—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. Hon. Adelbert Moot, representing certain defendants.

W. W. RULEY, recalled on behalf of the Erie Railroad Company:—

By JUDGE MOOT:

Q. When you were on the stand before, if I remember your testimony correctly, you said, in substance, that previous to the big strike of 1902 there was very much more cutting of prices than there had been since 1902? A. Yes, sir.

Q. Have you looked through your old files at my request to find something in between 1899 and 1902 that would give some idea of the nature and character of that cutting of prices? A. I have some figures here. I do not think they run back to 1899.

Q. Have you looked to find something that would give me some indication of how that cutting went? A. Yes, sir.

Q. What you produce here are the figures in Brooklyn for the year 1901 to the end of March, as an indication of how the thing was in those times? A. Yes, sir.

Q. You think those are fairly indicative of the way things were done then, do you? A. Yes, sir. Brooklyn has always been a highly competitive market. All the companies reaching New York harbor can all get in there.

Q. These figures were compiled by you at the time, in your ordinary way, from the reports made to you by the various companies for which they were compiled? A. Yes, sir.

Q. Do I understand that these figures were furnished to each of the companies named on the list at that time? A. Yes, sir.

Q. So they could all see as quick as they got them what

had happened for the year 1901, ending with the month of March? A. Yes, sir. There are four statements covering the three months.

(Judge Moot offered in evidence statement produced and identified by the witness, being a statement showing tonnage of the several sizes of anthracite coal sold in Brooklyn and average price per ton received for each size on the basis f. o. b. New York harbor, for January, 1901, February, 1901, March, 1901, and containing summary for the year 1901 to the end of March, for nine companies named on it, including the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, Delaware, Lackawanna and Western Railroad Company, the Lehigh and Wilkes-Barre Coal Company, Delaware and Hudson Coal Company, Stickney, Cunningham and Company, Erie Railroad Coal Companies, New York, Ontario and Western Railway Company and Coxe Brothers and Company, marked "Erie Exhibit No. 14."

Q. You have next compiled for me from your returns on file, a statement showing for New York harbor f. o. b. tonnage and prices for the month of November and December, 1900, and for the months of the years following 1900 down to and inclusive of March, 1909, have you? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 15.")

Q. You have next compiled from your returns on file, at my request, a statement showing the monthly percentages of shipments of anthracite coal by the several transporting companies and summary by years, the supposed assumed percentage that has been talked about here at the time, and then printed in red ink the tonnage wherever it fell below the assumed percentage, and printed in purple ink wherever it fell above? A. Yes, sir.

Q. That covers the months of 1892 up to and including 1908? A. Yes, sir.

Q. It starts in 1892 by months and covers all the years to and including March, 1909? A. Yes, sir.

Q. At the end is a summary and a total by years, and at the bottom in figures, either red or purple, it is shown whether these different companies exceeded or fell short of this assumed percentage for all these years? A. Yes, sir; from 1892 to 1908, both inclusive.

Q. For instance, according to these figures, the Delaware, Lackawanna and Western were usually above the assumed percentage, and altogether it came out 13,194,-258 tons above what they would have carried if they had carried the assumed percentage? A. Yes, sir.

Q. And the Pennsylvania Railway Company comes out below what it would have carried at the assumed percentage, 10,721,709 tons? A. Yes, sir.

Q. The others do not show as great differences? A. No, sir; the others are smaller.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 16.")

Q. You have also compiled for me from your returns on file statement showing the difference between lowest average price and average price actually received by each company and the difference between the receipts at lowest average price and the amount actually received from November, 1900, to March, 1909, inclusive? A. Yes, sir.

Q. Together with a summary of what that shows for the months of 1900 that are figured, and for the following years from 1900 down to 1908, inclusive, to show how much each one of these companies covered by this statement received more than it would have received if it had received the lowest price of its lowest competitor, on the various sizes in this f. o. b. New York market? A. Yes, sir.

Q. It shows, for instance, that the Hillside Coal and Iron Company received $2,030,025 in excess of what it would have received if it had received the lowest price of its lowest competitor, all that time? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 17."

Q. You have also compiled a statement for me on the basis of the average prices shown by your returns and as compared with the circular prices put in evidence by the Government for various companies, to show how much more those companies would have received if they had received their circular prices than they did receive, receiving the average prices reported by them to you? A. Yes, sir. The basis of the circular prices is taken from the Government statement.

Q. You got your circular prices from the Government Exhibits No. 172, White Ash Coal, Philadelphia and Reading Coal and Iron Company circular prices (page 428 Government Exhibit) and for the Lehigh and Wilkes-Barre you took Exhibit 177 (page 473 Government Exhibit), and for the Lehigh Valley you took Government Exhibit No. 178.

THE WITNESS:—There ought to be a note there that they are not circular prices, but they are quoted prices from the Lehigh Valley.

Q. And for the Delaware, Lackawanna and Western Railroad Company you took Exhibit 179 (page 435 Government Exhibits.) A. Yes, sir.

Q. And for the Hillside Coal and Iron Company you took Exhibit No. 180 (Page 436, Government Exhibits)? A. Yes sir. Those are all.

Q. That is the reason that is all you have been able to figure on in that statement, because that is all that is given in your source of information? A. Yes, sir.

Q. So that exhibit does not cover the entire ground and cover all the statistics for all the companies as your other exhibit that has been put in evidence here that compares what the various companies did receive, and what they would have received if they had received the lowest price instead of the average price they did receive? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 18.")

Q. There is also attached to that a summary for those

companies as far as those figures go, showing how much more they would have received if they had got their circular prices than they did receive? A. Yes, sir.

Q. For instance, the Philadelphia and Reading Coal and Iron Company would have received $750,728 more than they did? A. Yes, sir.

Q. You have also taken up in these various companies and undertaken to get for me the amount of money they paid to their employes for the different months of the year 1907 under what we call the sliding scale under the Anthracite Strike Commission report? A. Yes, sir.

Q. You did get reports from certain companies? A. Yes, sir.

Q. Representing substantially what percentage of the entire output? A. Sixty-three and eighty-nine one-hundredths very nearly sixty-four per cent.

Q. These returns from those companies that you got tallied, when you compared them, with your own information and figures which you had furnished to Mr. Neal, on which these payments were to be made? A. Yes, sir.

Q. You have compiled in a statement here for the year 1907 by months the returns made to you by the companies making them, giving the name of each company and the return of that company in figures by months for that year, and the total for the year? A. Yes, sir.

Q. You have also put a foot note at the bottom which shows that on the basis of that sixty-three and eighty-nine one-hundredths percentage that did make returns, assuming that the same ratio on the output was paid by all the rest of the operators under this award, that the amount paid would be $3,304,927? A. Yes, sir.

Q. Your own returns for those that did make returns are $2,111,519? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 19.")

Q. You have also on the basis of the output of coal as known to you for the years from 1902 to 1908, and on the basis of those returns, made a computation of the

amounts that those same companies would have paid for all the years since the Strike Commission award took effect, according to the payment of this sliding scale? A. Yes, sir.

Q. And you have put a foot note at the bottom showing that on the basis of the tonnage and of all paying this sliding scale, the amount paid from the time that sliding scale took effect, in March, 1903, to the end of December, 1908, would have been $17,702,300 or about three millions a year, aside from that first year? A. Yes, sir. The first year it was not in operation during the entire year.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 20.")

Q. You have also brought down to date your outline map and figures of anthracite coal production from the beginning to date. That is one of the publications of the United States Geological Survey? A. Yes, sir.

Q. That correctly gives on the basis of this tonnage and all you have told us about it before, the situation to date? A. It gives the tonnage for each general region, Wyoming, Lehigh and Schuylkill regions, and the tonnage and the percentages from 1820 to 1908, both inclusive.

It is understood with Government counsel that either side may refer to diagram and tables showing the annual shipments of anthracite coal from Pennsylvania fields since 1820, and quantity shipped from each trade region; also outline map of the anthracite coal fields of Pennsylvania, being a publication of the Department of the Interior, United States Geological Survey, by Charles D. Wolcott, Director.

It is understood that this diagram and map shall be filed with the Examiner, at the service of either party.

JUDGE MOOT:—In like manner I refer to the Anthracite Strike Commission Award, being Bulletin No. 51 of the Government publications, and desire it understood that without printing that document in full, any party to this case may be at liberty to refer to it, or any part of it,

in any argument in this case, as if it were printed as an exhibit.

Government counsel has no objection to this.

JUDGE MOOT:—In like manner I refer to the report and determination of the Interstate Commerce Commission in the case of Coxe Brothers and Company against the Lehigh Valley Railroad Company, reported in Fourth Interstate Commerce Commission Reports, at page 536, and determining what rates per ton should be paid on prepared sizes and smaller sizes of anthracite coal and desire that any party to this case shall be at liberty to refer to that report and determination as if the same were printed as an exhibit.

Government counsel understands the court takes judicial notice of these decisions, and makes no objection to them.

Cross examination.

By MR. MCREYNOLDS:

Q. You have presented a statement, Exhibit No. 14, showing the tonnage and so forth, anthracite coal sold in Brooklyn during the months of January, February and March, 1901. Is it a part of the business of your bureau to keep these statistics showing the sales and prices of anthracite coal in Brooklyn? A. We make a report on the Brooklyn business, and have since that time.

Q. When did you commence to make that report? A. I think it was about 1901.

Q. Was it not January, 1901, that you commenced it? A. I think we commenced a little before that, a few months before that.

Q. And have kept it up ever since? A. Yes, sir.

Q. Why is that report made? What is the purpose of it? A. Brooklyn has always been a highly competitive market, and there was always a good deal of curiosity to know what the prices were there.

Q. Do you make it in reference to any other market except Brooklyn? A. No.

Q. Under whose instructions did you make it? A. I

did not make it under anybody's instructions. It was simply a request from one or two of the companies to find what the prices were in the Brooklyn market, and I simply went around and got the agreement of the various companies to furnish me these prices, and have been making the report ever since.

Q. You make it for no other market except Brooklyn? A. No, sir. Of course I make it for greater New York, for all the f. o. b. coal coming to New York harbor, and, of course, this is part of that coal.

Q. The facts are that there had been a lot of price cutting in Brooklyn, and as the result of that price cutting there originated a good deal of dissatisfaction among the different companies? Is that right? A. I don't know whether it was or not. I suppose it was.

Q. And to find out what the real situation was in Brooklyn was the reason you began to compile these figures? A. I began to compile them because I was asked by one or two of the companies to do it. I do not know what their real reason was, but I assume that it was as you have stated.

Q. Since that time you have been furnishing to each one of these competitive companies in Brooklyn a statement of what each of its competitors has been doing? A. Yes, sir.

Q. It appears that during the months of January, February and March, 1901, there was some considerable discrepancy in prices. What would you say that the statement for the same months in the year 1908 showed? A. They certainly would not show as great discrepancies. They would probably show the same relative discrepancies as the general f. o. b. prices at New York showed.

Q. In other words, since you began to furnish these statements to the various competitors in the market in Brooklyn, these discrepancies in price have declined, and the prices which they now get are much nearer than they were in 1901, or thereabouts, when you began to make the reports? A. Yes, sir.

Q. There is no doubt about that; is there? A. None whatever.

Q. Is it at all necessary, in order to carry into effect the award of the Anthracite Strike Commission, that these figures in reference to Brooklyn should be compiled? A. No, sir.

Q. Is it necessary in order to calculate the prices that the various producers of coal shall receive under the sixty-five per cent. contracts? A. No, sir.

Q. It is not necessary then for any purpose relating to the prices of labor or to the prices for which coal is sold for you to compile these figures to show the sales and receipts in Brooklyn, is it? A. No, sir.

Q. It is necessary for you to do that in reference to the f. o. b. prices received at New York harbor? A. Yes, sir.

Q. Upon those prices and the sales of coal the prices of labor are all based? A. Yes, sir.

Q. Do you still make up these reports in reference to the Brooklyn sales? A. Yes, sir.

Q. Do you send them out every month to these same companies? A. Yes, sir.

Q. What proportion of the coal that is sold in Brooklyn is sold by these companies to whom you make these monthly reports? A. I could not answer that. I think I could compile it.

Q. Ninety-five per cent., is it not? A. No; I could not say, because there is a great deal of coal sold in Brooklyn by independent operators. It is a nearby market, and there is quite a good deal of it.

Q. What does the total amount sold in greater New York by the independent operators amount to in percentage to the whole? A. I suppose about ten per cent.

Q. And the proportion shown in Brooklyn is no greater than ten per cent., is it? A. No; I do not suppose it is.

Q. So the people who employ you to make up these monthly reports of the prices in Brooklyn are the people who sell ninety per cent. of the anthracite coal there? A. I would not like to say it was ninety per cent., but I should say it was somewhere in that neighborhood.

Q. You have not put into the record the prices of coal in Brooklyn for any of the months of 1908 and 1909? A. No, sir.

Q. You have also put in here a tabulation showing f. o. b. price at New York harbor during the years 1900 to 1909, being Erie Exhibit No. 15. That statement commences with the month of November, 1900, and the companies included, the tonnage and the price for which are shown, are the Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Coal Company, the Lehigh and Wilkes-Barre Coal Company, the Delaware, Lackawanna and Western Railroad Company, the Pennsylvania Coal Company, the Hillside Coal and Iron Company, the New York, Ontario and Western Railway Company, the New York, Susquehanna and Western Railroad Company, and Coxe Brothers and Company. In November, 1900, were all these companies operating in the anthracite coal regions of Pennsylvania? A. Yes, sir.

Q. Were they all sending coal and selling it in New York harbor? A. Yes, sir.

Q. And the amounts and prices which you give here represent the amounts and prices which were sold by and received by those companies at New York harbor? A. Yes, sir.

Q. Those same companies continued to do that business down to what time? A. I cannot recall that. It shows right on the statements. After a while the Pennsylvania Company was consolidated with the Erie and the Hillside, and the New York, Susquehanna and Western were Hillside, and Coxe Brothers & Co. were the Lehigh Valley. They are the changes. The times I do not recall now.

Q. In the later months, say June, 1907, and subsequent thereto, certain of these companies which were selling coal at New York harbor in 1900 do not appear. When did the Pennsylvania Coal Company cease to send coals to New York harbor and sell them there? A. I cannot answer that. It will show on that statement. When the name ceases to appear, then the prices are the consolidated prices.

Q. And the company ceased then to sell in this market

and report to you? A. I do not know anything about it. I simply know that the prices were consolidated; that is, the Hillside Coal and Iron Company's prices included the Pennsylvania Coal Company and the New York, Susquehanna and Western Coal Company.

Q. So that when the Pennsylvania Coal Company and the New York, Susquehanna and Western Railroad Company disappear from this statement at that time they ceased to report to you any prices upon coal sold at New York harbor? A. Prices were consolidated then.

Q. And then were reported to you through the Hillside Company? A. Yes, sir.

Q. What became of the sales of Coxe Brothers & Co.? A. The same thing, when they were acquired by the Lehigh Valley.

Q. They ceased reporting? A. Yes. sir. It will show on the statement, whenever it was.

Q. It seems that the name Coxe Brothers & Co., although acquired by the Lehigh Valley Company, appears on this sheet. Where do you get their statement now? A. I get it from the Lehigh Valley. The reason for that is that it is necessary to divide that coal in order to make the average for the so-called Lehigh region, not all the Lehigh Valley's coal coming from the Lehigh region.

Q. Were those companies which underwent a merger about which you have spoken selling in any other market outside of New York? A. Yes, sir.

Q. Selling all over the country? A. I do not know to what extent the New York, Susquehanna and Western was selling, but Coxe Brothers & Co. were selling in all markets.

Q. All out through New England and New York? A. Yes, sir; and Canada. Not any of the western markets.

Q. The Pennsylvania Coal Company was selling? A. The Pennsylvania Coal Company was selling in all markets.

Q. Throughout New England, New York and Canada? A. Yes, sir.

Q. The Lehigh and Wilkes-Barre Coal Company? A. The Lehigh and Wilkes-Barre Coal Company is selling there still.

Q. They did sell throughout the different markets of the world? A. Yes, sir. All excepting the western markets. They do not go West.

Q. They sell in New York, New England and Canada? A. Yes, sir.

Q. Has the Philadelphia and Reading Coal and Iron Company been selling in the different markets in the United States ever since you have had any connection with this Bureau? A. Yes, sir.

Q. And has the same thing been true through New York markets, New England markets and the Canadian markets? A. Yes, sir.

Q. Has the same thing been true of the Lehigh Valley Coal Company? A. Yes, sir.

Q. Has the same thing been true of the Hillside Coal and Iron Company? A. Yes, sir.

Q. Do you not know it to be a fact that a good deal of the smaller sizes of coal that is sold f. o. b. at New York harbor is sold under annual contracts? A. Yes, sir.

Q. And that same thing applies to broken coal? A. To a more or less extent; yes.

Q. Those annual contracts are at a fixed price running over a period of years? Is that your understanding on the subject?

JUDGE MOOT:—I submit the witness cannot be asked as to the contents of contracts he has not seen, and as to which it must be clear, if there are such contracts, they exist because they do differ from each other, and I submit if it is necessary to have the contracts because the market price is not being followed, then if the Government cares for anything of this kind, it should either put the contracts in evidence, or at least examine witnesses who know something about them. I do not seen how a statement of Mr. Ruley about contracts he has never seen can throw any light upon anything, except the state of his mind.

A. I don't know about the period of years, and I never saw one of the contracts. I simply do know, or, at least, I have been informed, that small coal was, to a certain extent, contracted for for some length of time. Beyond that I do not know.

By MR. MCREYNOLDS:

Q. Deliveries under those contracts might affect the averages received by a company during each month, might they not?

JUDGE MOOT:—I object on the ground that the speculation of Mr. Ruley as to what deliveries under contracts not disclosed might do is no competent evidence with which to meet actual statistics of what has been done.

A. I will say this, that if a contract were made for the delivery of coal running over the entire year at a dollar and fifty cents a ton, and the spot price at New York harbor was a dollar and sixty cents a ton undoubtedly it would affect it.

By MR. MCREYNOLDS:

Q. It would be bound to affect it? A. Yes, sir.

Q. Your statistics which you have referred to in these tables only show what the company has reported to you of its actual receipts and actual deliveries during a particular month? A. Precisely. That is all I deal with.

Q. And if that includes coals which are delivered under a continuing contract and not sold particularly and specially for delivery during that month it would affect the result or might affect the result. Is that true? A. Yes, sir.

Q. How far that difference exists you are not able to state? A. No, sir.

Q. And there is nothing about your tables which would enable any one examining them to find out how far that difference exists, is there? A. No, sir.

Q. The Philadelphia and Reading Coal and Iron Company delivers most of its coal f. o. b. at Port Reading, does it not? A. Yes, sir.

Q. There is a differential in favor of coal delivered at that point, is there not? A. Yes, sir.

Q. Of five cents a ton? A. Yes, sir.

Q. In these tables which you have made up have you shown that that differential exists? A. I do not pay any attention to that differential.

Q. You take the published prices for the month at Port Liberty? A. Yes, sir.

Q. And without considering the differential at Port Reading you have made up your figures? A. That is the average f. o. b. prices.

Q. That would not take into consideration the differential? A. No, sir.

Q. You have made up a statement, which has been put in evidence here and marked "Erie Exhibit No. 18," showing the difference in dollars between the amount actually received by each company for the several sizes of coal sold, and what would have been realized if the circular prices published by the companies had been obtained. In making up that statement you have shown that the Philadelphia and Reading Coal and Iron Company would have received a large amount more than it did receive if it had gotten the published prices. Did you take into consideration this five per cent. differential about which you have been telling us in making up that total? A. No; I did not.

Q. From that statement showing $750,000 excess for the Philadelphia and Reading Coal and Iron Company you would have to take off an amount equal to five cents per ton for all the coal? A. Yes, sir.

Q. How much that would be you do not know? A. No, sir. Not until I figure it up.

Q. You also introduce a statement showing the monthly percentage of shipments of anthracite coal by the several transporting companies and summary by years, which has been marked "Erie Exhibit No. 16." Among other things is shown the difference in tons between actual tonnage and that based on the estimated mine capacity. Where do you get the figures showing the estimated mine capacity? A. Those percentages were published in sometime, I think, about the middle of 1896. They are supposed to be at that time the mine capacity.

Q. And have been referred to in publications and otherwise again and again as the president's percentages? A. Yes, sir.

Q. Where were they published first, so far as you

know? A. The first I saw them I think was in one of the coal trade journals. The first publication I am not sure. They were generally published at the time.

Q. You have also presented here a statement showing the difference between lowest average price and average price actually received by each company and the difference between receipts at lowest average price and amount actually received November, 1900, to March, 1909, inclusive, which has been marked "Erie Exhibit No. 17." On this table would the figures be affected by the fact that one or more of the companies had delivered during a given month coal under a yearly contract at a price which did not correspond with the monthly published prices? A. Yes, sir.

Q. Would these figures be affected by allowances made for coal that did not come up to standard? A. No, sir.

Q. Would they be affected by prices which prevailed in Brooklyn? A. They would be, of course, because Brooklyn prices are a part of that price. That is, all coal that is sold f. o. b. in Brooklyn.

Q. These prices are not based on f. o. b. New York harbor prices? A. Oh, yes.

Q. Then how would the prices at Brooklyn affect it? A. Because coal is sold f. o. b. for Brooklyn delivery and is included. There are two ways for coal to go to Brooklyn, f. o. b. and all rail, and they count float coal all rail coal when it goes right over in the car.

Q. So this table is not founded alone on the f. o. b. prices which are used in determining the prices of labor and the prices to be paid under the sixty-five per cent. contracts? A. Absolutely.

Q. The Brooklyn prices, of which you have made a statement, put in evidence, you told us a while ago, were not figured in that?

JUDGE MOOT:—I object to the counsel misstating any evidence of the witness.

MR. MCREYNOLDS:—Counsel has not misstated the evidence.

A. There is a mistake there. All f. o. b. coal New

York harbor, whether it goes to Brooklyn, or whether it goes to Massachusetts or New York, or any other place, is figured in those general average f. o. b. prices, and the prices given there on that sheet are those prices and include all Brooklyn f. o. b. coal, but coal that might go to Brooklyn by rail, which we do not figure at all or take any account of, of course would not go in there; that is, coal which goes over in floats.

Q. Since 1900 have these differences in prices between the highest received and the lowest received tended to increase or decrease? A. Differences have tended to decrease.

Q. Then in 1900 there was a considerable difference between the different companies in the same month? A. Yes, sir.

Q. And since that time has there been a gradual approaching to the self-same figure reported by each company? A. There has been a tendency in that direction.

Q. So that the differences in 1908 and up to date in 1909 are materially less than they were when you began this compilation in 1900? A. I should judge they are. I did not compare that year, but that has been the tendency. I would not say it in regard to any particular month.

Q. To illustrate what I mean, it appears from the table which you have introduced that the lowest price for Egg coal in November, 1900, was received by the Delaware, Lackawanna and Western Railroad Company, three dollars and sixty-four cents, and that Coxe Brothers and Company received seventy-one cents more than that lowest price. Is that correct? A. That is right.

Q. Look at the table for November, 1908, and see what was the lowest price received for Egg coal, and what company received it? A. The lowest price was the Lehigh and Wilkes-Barre Coal Company, four ninety-four.

Q. What was the greatest excess above that minimum received by any company? A. The Delaware, Lackawanna and Western, six cents.

Q. So, in November, 1900, there was a difference of seventy-one cents between the lowest and the highest, and

in November, 1908, the difference was six cents A. Yes, sir.

Q. You have also put in a statement showing the difference in dollars between the amount actually received by each company for the several sizes of coal sold and what would have been realized if the circular prices published by the companies had been obtained, which has been marked "Erie Exhibit No. 18." State whether what you designate as "Excess price" has not gradually declined in amount since November 1900, the date when the table begins, down to this time? A. Do you mean the excess of the circular over the actual price?

Q. Yes. A. Yes, sir.

Q. To bring that out sharply, look at this statement and tell us what the largest excess and largest deficit price upon Egg for the month of January, 1901, was? A. The table shows that the Philadelphia and Reading Coal and Iron Company received forty-two cents less than their circular price, and that the Lehigh Valley Coal Company received thirty-five cents more than their quoted price.

Q. Look at the table for January, 1908, and show us what company, if any, got more for Egg coal than its published price, and how much more? A. No company got more.

Q. Did any company get less? A. The Philadelphia and Reading Coal and Iron Company got five cents less.

Q. And the Lehigh Valley Coal Company? A. They either did not sell any, or sold it right at the circular price. I cannot say which.

Q. The company getting the largest figure below its excess price was the Philadelphia and Reading Coal and Iron Company, which received five cents less? A. Yes, sir.

Q. And the next largest was the Hillside Coal and Iron Company which received two cents less? A. Yes, sir.

Q. The other companies your table shows received nothing in excess or nothing below? A. Either that, or did not sell any.

Q. You have also introduced a statement showing amount in dollars paid under the sliding scale by months for the companies indicated, which has been marked "Erie Exhibit No. 19." I suppose that statement is intended to show the amount paid to laborers? A. Yes, sir.

Q. That shows also, does it not, how much more each one of these companies paid because the average f. o. b. price was in excess of four dollars and fifty cents; is that right? A. Yes, sir.

Q. For every dollar of excess received by those laborers, as shown upon this table, how many dollars were received by the selling companies? A. I do not know.

Q. Does not the sliding scale depend upon that? A. Yes, sir.

Q. Can you not figure that out and tell us? A. I suppose I could.

Q. Suppose the f. o. b. price instead of being four dollars and fifty cents is five dollars, that means fifty cents a ton to the selling companies? A. Yes, sir.

Q. How much increase of wages does that mean? A. That is very hard to tell, because the sliding scale, so far as the employe is concerned, embraces all sizes of coal, while, so far as the company is concerned, the excess price which they receive is only figured on the prepared sizes, so it is a pretty intricate thing to figure out. I do not know exactly how you could figure it.

Q. So you have put down here how much more the laborers have received? A. Yes, sir.

Q. But you are unable to tell us how much more the companies have received, because of this advance? A. It would depend absolutely on the proportion of the prepared to the smaller sizes.

Q. It would send up at least five dollars into the treasury of the company for every one paid to the laborer, would it not? A. No, sir. I think it was figured at one time that the company got about the same amount, taking into consideration the prepared and smaller sizes, as the laborer.

Q. So you think then if there is a rise of five cents per ton that the difference would be equally divided between the companies and the laborers? A. Yes, sir.

Q. In other words, if the company got two dollars more they would give the laborers one dollar? Is that right? A. Somewhere in that neighborhood; yes, sir.

Q. You have also introduced a table, marked "Erie Exhibit No. 20," showing amount in dollars paid under the sliding scale by years for the companies indicated, representing in tonnage an average of about sixty-four per cent. of the coal production, and you have put on it a note, "If the same percentage of excess payments under the sale be applied to the total tonnage for the six years named, the excess paid during that period would be about $17,702,300." In order for the laborers to have gotten that addition of $17,702,000, it was necessary for the public to have paid something like thirty-five million dollars for coal in excess, was it not? A. They certainly would have to pay in excess.

Q. On the figures you have given us? A. Yes, sir.

Q. If the laborers got seventeen million dollars more, the public paid thirty-five million dollars more? A. I should suppose somewhere in that neighborhood.

Q. What proportion of the anthracite coal that is produced in Pennsylvania is shipped and sold in markets outside of the State? A. I could not answer that offhand.

Q. Eighty per cent.? A. There is about sixty-five per cent. of coal sold in Pennsylvania, New York, and New Jersey, of the total shipments.

Q. The other thirty-five per cent. goes to other markets outside of those three States? A. Yes, sir.

Q. The Temple Iron Company took over certain properties which had been controlled by Simpson and Watkins back in 1899, and certain obligations of the Temple Iron Company were guaranteed in given percentages by several railroad companies. Did you have anything to do with figuring out those percentages? A. Absolutely nothing.

Q. You do not know upon what it was based? A. No, sir.

Q. Prior to the acquisition by the Temple Iron Comyany of the Simpson and Watkins operations were you in any way acquainted with the Simpson and Watkins business? A. I simply knew what collieries they controlled and operated.

Q. Were they operating collieries and selling coals in the market? A. I really do not know whether they were selling it themselves or whether they were selling it through some one else.

Q. Did they not report to you their sales? A. No, sir.

Q. They never have? A. No, sir.

Q. They were always independents? A. Yes, sir.

Q. Up to the time they sold out? A. So far as I know.

Q. And did not send you their sales? A. No, sir. I never heard anything from them except the annual report which they made for the purpose of filing with the Geological Survey.

Q. You did not furnish them the statistics which you compiled? A. No.

Re-direct examination.

By JUDGE MOOT:

Q. With reference to these sliding scale figures, the Award of the Anthracite Strike Commission reads: "The wages fixed in the awards shall be the basis of, and the minimum under, the sliding scale." It shall become effective April 1st, 1903, and shall affect all miners and mine workers included in the awards of the Commission. "For each increase of five cents in the average price of white ash coal of sizes above pea coal, sold at or near New York, between Perth Amboy and Edgewater, and reported to the Bureau of Anthracite Coal Statistics, above four dollars and fifty cents per ton f. o. b., the employes shall have an increase of one per cent. in their compensation, which shall continue until a change in the

average price of said coal works a reduction or an increase in said additional compensation hereunder; but, the rate of compensation shall in no case be less than that fixed in the Award." That is what you have reference to as being the basis of this increase that you have figured out for the employes up there? A. Yes, sir.

Q. You say that does not take into account the smaller sizes at all or what becomes of them, and does not take into account when coal is sold for less than four dollars and fifty cents at all? A. No, sir.

Q. Or how much the company gets for that? A. No, sir.

Q. While it is very intricate to figure out, when you do figure it out as you did for counsel here outside of the record, it is said to figure out that the company gets about a cent itself each time its employee gets a cent in the way of advance in wages? A. Yes, sir.

Q. Or the company a dollar and the employe gets a dollar? A. Yes, sir.

Q. Or the company gets a million dollars when he gets a million dollars? A. Yes, sir.

Q. You have spoken of the difference in the prices gradually growing less since 1900, according to your observation, as this demand for coal has increased. If that difference in f. o. b. prices received is very material, that would show itself in the excess amounts of the companies for these various years that are based on this compilation of yours? A. Yes, sir.

Q. Observe, the Hillside Coal and Iron Company excess for 1902 as figured out by you, covering, I assume, the Pennsylvania Coal Company as well, is $145,619? A. Yes, sir.

Q. For 1903 is $330,360? A. Yes, sir.

Q. For 1904 is $325,323? A. Yes, sir.

Q. For 1905, $346,952? A. Yes, sir.

Q. For 1906, $395,208? A. Yes, sir.

Q. For 1907, $263,358? A. Yes, sir.

Q. And for 1908 is $226,717? A. Yes, sir.

Q. That does not show any very rapid or considerable

decrease in difference, does it? A. No; it does not appear to.

Q. The highest difference there shown is for the year 1906, is it not? A. Yes, sir.

Q. The difference for the Delaware, Lackawanna and Western for 1900 is shown to be $38,391, is it not? A. Yes, sir.

Q. For 1901, $86,896? A. Yes, sir.

Q. For 1902, $76,754? A. Yes, sir.

Q. For 1903, $236,193? A. Yes, sir.

Q. For 1904, $201,123? A. Yes, sir.

Q. For 1905, $316,931? A. Yes, sir.

Q. For 1906, $235,924? A. Yes, sir.

Q. For 1907, $269,493? A. Yes, sir.

Q. For 1908, $248,664? A. Yes, sir.

Q. That does not show any very striking decrease in that company, does it? A. No, sir.

Q. In fact, in that company's case, as well as the Hillside's, the differences were much less in 1900 and 1901 than they were the following years, were they not? A. Yes, sir.

Q. They have been growing gradually more instead of less since 1901? A. Yes, sir.

Q. The other companies, the differences from the beginning to the end are not so striking? A. No.

Q. But they do not show any very great decrease, do they? A. No, sir.

Q. As your summary shows? A. Yes, sir.

Q. Your summaries are based on f. o. b. prices? A. Yes, sir.

Q. Those are the same f. o. b. prices which you furnished to the counsel and which the Government put in evidence as their Exhibit No. 11, beginning on page 38 of their exhibits? A. Yes, sir.

Q. And following through by regions and by months and by years to October, 1908? A. Yes, sir.

Q. Those same prices that you furnished the Government in that exhibit are the prices on which you have made these computations to show this excess? A. Yes, sir.

Q. Both as to circular prices and as to f. o. b. average price? A. Yes, sir.

Q. When you answered the counsel for the Government about the Brooklyn figures that you gave us here for January, February and March, 1901, did you mean to state to the Government counsel in answer to his question that these Brooklyn figures were not included in the figures on which your f. o. b. prices are computed? A. I did not.

Q. As matter of fact, are they or are they not? A. They are.

Q. Brooklyn is a part of New York tidewater? A. Yes, sir.

Q. And always has been? A. Yes, sir.

Q. So that during all the years that you have been making the average f. o. b. prices for New York tide, those prices have covered all coal moved to Brooklyn from any point in New Jersey by boat? A. Yes, sir.

Q. Except, as you said, the float coal, that is moved there bodily in cars? A. Yes, sir.

Q. And they never have included that float coal, have they? A. No. Because that float coal is sometimes sold for Long Island points, delivered at a delivered price and not at an f. o. b. price at all. So that has to be eliminated.

Q. Has to be eliminated because of that uncertainty of the amount of coal going over to Brooklyn in floats in cars? A. Yes, sir.

Q. And always has been? A. Yes, sir.

Q. As matter of fact, there is some more coal sold in Brooklyn than these Brooklyn figures would show? A. Yes, sir. It does not amount to very much now.

Q. The long and short of it is that these exhibits that you have prepared for me are on the basis of the same f. o. b. prices that you compiled for and put in evidence as a witness for the Government? A. Yes, sir.

Q. If I remember rightly, counsel called your attention to the figures on the month of January, 1901, in this Exhibit No. 18, showing the excess that the companies would have received over what they did receive if they had got

their circular price or quoted price instead of getting merely their f. o. b. price? A. Yes, sir.

Q. And he called your attention to the fact that in January, 1901, the Lehigh Valley Coal Company apparently got thirty-five cents more than its quoted price on Egg coal? A. Yes, sir.

Q. And the Philadelphia and Reading Coal and Iron Company got forty-two cents less than its quoted price that month? A. Yes, sir.

Q. And that that was not the case for a later month in a later year to which he called your attention? A. Yes, sir.

Q. Do you know what is the explanation of the fact that the Lehigh Valley Coal Company there appears to have got more than its quoted price, and the same month the Delaware, Lackawanna and Western seems to have got twenty-seven cents more than its quoted price? A. I do not.

Q. That is shown in red ink by you to call attention to it, I suppose? A. Yes, sir.

Q. It appears that the Lehigh Valley Coal Company again in the month of April, 1901, got from one cent to two cents more than its quoted price on some sizes? A. Yes, sir.

Q. You do not know the explanation of that either? A. No. I do not know.

Q. These excesses appear from time to time in various companies? A. Yes, sir.

Q. They are all printed here in red ink? A. Yes, sir.

Q. November, 1905, is about the first month that we find that does not seem to show something of them? A. Yes, sir.

Q. They reappear again after that in some of the months? A. Yes, sir.

Q. One of them appears as late as November, 1908, in the Lehigh Valley Company case? A. Yes, sir.

Q. You spoke of this difference apparently being a decreasing difference in this excess; that these companies would have received more than they did receive had they

received their circular price instead of their f. o. b. price on which this sliding scale of wages was paid. For the year 1900 you find that the Lehigh and Wilkes-Barre Company would have received $17,635 more than it did get? A. Yes, sir.

Q. For 1901 it would have gotten $93,146 more than it did get? A. Yes, sir.

Q. For 1902 $109,178 more than it did get? A. Yes, sir.

Q. For 1903 $129,925 more than it did get? A. Yes, sir.

Q. For 1904 $94,799 more than it did get? A. Yes, sir.

Q. For 1905 $11,874 more than it did get? A. Yes, sir.

Q. For 1906 $115,289 more than it did get? A. Yes, sir.

Q. For 1907, $125,445 more than it did get? A. Yes, sir.

Q. For 1908 $98,012 more than it did get? A. Yes, sir.

Q. There is not any very striking decrease there, is there? A. No, sir.

Q. In fact, as matter of fact, there was an increase after 1901, was there not? A. Yes, sir.

Q. If we follow through the Philadelphia and Reading Coal and Iron Company figures in the same way, they will show that there has been no substantial falling off in that excess, and it is considerably more than in 1900? A. Yes, sir.

Q. But that is the one you said there was an error in? A. Yes, sir.

Q. Although, of course, that error would not affect this particular question? A. No; only relatively.

Q. If I follow the Hillside Coal and Iron Company figures through it will appear that this excess, for instance, in 1905, 1906, 1907 and 1908, all of those years, was much greater than in 1900? A. Yes, sir.

Q. So that when you come to look at the figures them-

selves, your statement that the difference was a gradually decreasing one does not turn out to be very accurate, does it? A. I was speaking of the figures as they appeared on there in respect to particular sizes of coal. I was not speaking of summaries.

Q. When you come to take the summary of business of each company as a whole for those various years, as the summaries show, those differences are very constant? A. Yes, sir.

Re-cross examination.

By MR. MCREYNOLDS:

Q. So far as the prepared sizes of coal are concerned, since 1900 the selling prices of those various companies that report to you have come gradually nearer and nearer? A. I would say that was the general tendency.

Q. And whatever difference there may have been is chiefly made up with reference to the steam or smaller sizes? A. I would like to figure that out before I answer it.

Q. The award of the Commission provides that for every five cents advance in the average price of White Ash coal in sizes above Pea, above four dollars and fifty cents, the employe should have an increase of one per cent. in compensation. It appears in the record from the evidence of Mr. William J. Richards introduced in behalf of the Philadelphia and Reading Coal and Iron Company, that the average labor cost in the production of coal for the period from April, 1903, to February, 1909, was one dollar fifty-seven and four-tenth cents per ton. Taking that as accurate, if the price of coal advanced five cents per ton, what would be the advance upon the labor in producing that ton of coal? A. One and fifty-seven hundredths per cent.

Q. If the smaller sizes did not advance at all, and if the prepared sizes were sixty-five per cent. of the total output —— A. They are not.

Q. How much are they? A. They are not much more than sixty.

Q. If they were sixty per cent., then what would be the relationship between these two figures? A. I would simply take the five cents and multiply it by sixty, which would give you about thirty cents, and the difference between the one cent and the fifty-seven hundredths would be the answer.

Q. If the smaller sizes advanced also, the advantage to the company would be still greater? A. Undoubtedly.

Q. Does not that follow? A. Of course it does.

By JUDGE MOOT:

Q. In other words, that simply shows that what you said before approximately is correct, that the steam sizes of anthracite being sold in competition with bituminous, so that their advancing depends on the bituminous advancing or not advancing, the whole thing gets down to the advance in the prepared sizes of anthracite coal, right where the Strike Commission put it? A. Yes, sir.

Q. When it gets down to that, as you show, it figures out approximately about a dollar to the company every time the man gets a dollar? A. Yes, sir. Of course, it would not with all sizes by any means.

Q. That would depend on their average of larger sizes? A. Yes, sir.

Q. For instance, a company like the Lehigh and Wilkes-Barre, producing only about fifty per cent. prepared sizes, would not make out as well with its men? A. No, sir.

Q. And a company like the Delaware, Lackawanna and Western, producing a higher per cent. of prepared sizes, would make out better? A. Yes, sir.

At 1.15 o'clock a recess was taken until 2 o'clock P. M.

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2 P. M.

Present.—The Examiner. Messrs. McReynolds, Todd, Moot and Seger, of counsel. Also, W. W. Green, Esq., representing the Mercantile Trust Company, trustee of the mortgage of the Erie Railroad Company, dated February 1st, 1901, commonly called the Pennsylvania Collateral Indenture.

ISAAC MICHAELS, called on behalf of the Mercantile Trust Company, trustee of the mortgage of the Erie Railroad Company dated February 1st, 1901, having been duly sworn, was examined as follows:—

By MR. GREEN:

Q. What is your position in the Mercantile Trust Company? A. Trust officer.

Q. Does your department have charge of trusts under which the Mercantile Trust Company is trustee, and, especially, those which are created by mortgages or deeds of trust given to secure corporate bonds? A. Yes.

Q. How long have you been connected with the trust department? A. Twenty-three years.

Q. Is the Mercantile Trust Company trustee under the mortgage dated February 1st, 1901, and executed by the Erie Railroad Company, and commonly known as the Pennsylvania Collateral Indenture? A. It is.

Q. That mortgage was presented to your company in the ordinary course of business, and accepted by it, was it not? A. It was.

Q. And was executed by it? A. It was.

(Mr. Green produced copy of the mortgage referred to and stated that it is a correct copy.

(Counsel for the Government accepts this as a correct copy of the mortgage.)

Q. This mortgage provides for an issue of bonds not exceeding in the aggregate thirty-six millions of dollars, payable the first day of February, 1951, with interest at four per cent. per annum, does it not? A. It does.

Q. It also provides that it shall be a lien upon certain property, among others, certain shares of capital stock of various corporations? A. Yes, sir.

Q. State, if you can, what collateral is held by your company on deposit with it subject to the terms and lien of this indenture? A. One hundred thousand shares Pennsylvania Coal Company, thirty thousand shares Erie and Wyoming Valley Railroad Company, twenty-five hundred shares of the Delaware Valley and Kingston Railroad Company, and sixty-six thousand shares each

of the preferred and common stocks of the New York, Susquehanna and Western Railroad Company.

Q. The mortgage further provides, in Section 2 of Article 1, that there shall be certified by the trustee thirty-two million par value thereof immediately upon the execution of the indenture, or as soon thereafter as may be. State how many bonds have been certified by your company in accordance with this provision? A. The entire $32,000,000.

Q. Were they so certified at or about the date of the execution of the mortgage, or shortly thereafter? A. They were. They were certified about that time.

Q. Under Section 3 of the mortgage in the same article, it is further provided, that $4,000,000 in par value of the bonds may be certified for certain purposes therein mentioned, among others, for betterments and improvements of any property which shall be subject to the lien of the mortgage and that shall belong to any company of whose capital stock at least ninety per cent. shall be held by the trustee of the indenture, also to furnish moneys to reimburse the railroad company for moneys furnished to any other such company or companies of whose capital stock not less than ninety per cent. shall be held by the trustee, and to reimburse the company for the acquisition of the shares of capital stock and bonds of any company which shall own any mine or colliery, and so forth. State whether under this provision of the mortgage you have certified and delivered any bonds. A. We have. $2,000,000 par value of the $4,000,000 authorized under that section.

Q. So that, in all, your company has certified and delivered thirty-four millions in par value of the bonds authorized? A. It has.

Q. Your company is not financial agent of the railroad company in the payment of coupons, is it? A. It is not.

Q. You do not act as registrar for the bonds? A. We do not.

Q. From your general information and inquiries you have made, can you say whether or not these bonds are

widely held by the general public? A. I have made examination, and find that they are scattered generally throughout the country among persons and various bankers on account of their purchasers.

Q. That information was derived from presentation of the coupons which have fallen due on the last interest date and a preceding interest date? A. Yes; last February.

Q. A large number of those coupons are presented through banks and other financial institutions of this city? A. They are.

Q. From your experience with the Mercantile Trust Company and banking concerns, can you testify as to what the general fact is about coupons presented in that way; that is, whether they are the property of the presenting corporations, or whether they are received by them from their depositors and correspondents in and out of the city of New York for collection? A. My general experience is this, that the greater majority of the coupons presented for payment are for account of customers, presented by local banks.

Q. You have no doubt that is the fact in regard to these coupons? A. Yes; I have no doubt of it.

Q. Section 9 of Article 2 of the mortgage provides that the railroad company shall deliver to the sinking fund trustees, and also to the Mercantile Trust Company as trustee, annual statements showing the total amount of coal sold and delivered during the preceding calendar year from mines of the Pennsylvania Coal Company, and will pay to the sinking fund trustees a sum equal to ten cents for every ton of coal so sold, such money, together with all accumulations of interest thereon, to be appropriated to and constitute a sinking fund. State whether the railroad company has from time to time advised you as to the number of tons of coal sold, derived from the mines of the Pennsylvania Coal Company. A. It has.

Q. Have you been advised by the sinking fund trustee from time to time as to the amount of money in the sinking fund together with accumulations of the interest?

A. I was advised as to the amount of money received and the amount of bonds purchased and the commissions and interest.

Q. You have been advised by the sinking fund trustee as to the purchase of bonds? A. Yes.

Q. When was your last advice? A. This month.

Q. Including the last advice, what is the total amount in par value of the bonds so purchased on account of the sinking fund as shown by the statements delivered to you by the sinking fund trustee? A. $2,085,000 par value.

Cross examination.

By MR. MCREYNOLDS:

Q. What was the purpose for which the Erie Railroad Company issued the bonds secured by this mortgage in reference to which you have been testifying? A. I do not recall the purposes. I suppose they are expressed in the mortgage.

Q. The mortgage says this: "Whereas, for the purpose of making payment for shares of the capital stock of the following companies acquired or to be acquired by the railroad company, namely,

"Pennsylvania Coal Company, a corporation organized under the laws of the State of Pennsylvania;

"Erie and Wyoming Valley Railroad Company, a corporation organized under the laws of the State of Pennsylvania;

"Delaware Valley and Kingston Railroad Company, a corporation organized under the laws of the State of New York;

"And, for the purpose of providing means for its other corporate purposes and businesses, the Railroad Company desires to make and to issue a series of 50-year four per cent. Pennsylvania collateral gold bonds, limited in amount so that the aggregate principal sum of such bonds outstanding at any one time shall never exceed thirty-six millions, all of which bonds at any one time outstanding shall be secured as hereinafter provided and so forth."

Does that express what you understood to be the purpose of issuing these bonds? A. I do not know the application of the proceeds from the bonds delivered, but we received the securities, and I presume they were applied to that purpose.

Q. What I have read to you is properly quoted from the mortgage? A. It is.

Q. Do you know what the Erie Railroad Company paid for those shares of the Pennsylvania Coal Company? A. I do not.

Q. Do you know what it paid for any of these shares? A. I do not.

Q. In whose name do these shares stand upon the books of the various companies that originated them? A. Some in the names of the railroad companies and others in the names of individuals, to qualify them as directors, all of which are signed in blank.

Q. The certificates are signed in blank and held by you? A. Yes, sir.

Q. Who votes them at stockholders' meetings, or who has power to vote them? A. The corporations and persons in whose names the stock stands.

Q. You mean whom by the corporation—the railroad? A. The Erie Railroad Company.

Q. Your company does not undertake to vote them? A. No; we do not, for the reason that there is a provision in the mortgage that they shall be entitled to those privileges while there is no default.

Q. The railroad company collects the dividends on these stocks if there be any? A. It does.

Q. What is the value of these bonds in the market? A. I believe they are selling at about ninety.

It is agreed by counsel that either side may put in such extracts from the mortgage produced by Mr. Green as it may be advised.

DAVID BOSMAN, a witness called on behalf of the Erie Railroad Company, having been heretofore sworn, was examined as follows:—

By JUDGE MOOT:

Q. As Secretary of the Erie Railroad Company, having charge of the contracts and records of that company, and of its subordinate corporations and interests, have you gone over this statement of the Pennsylvania Coal Company legislation and contracts from 1838 down to March 20th, 1901, with Mr. Taylor of the legal department, with a view to making a correct statement of the substance of that legislation and of those contracts for this record? A. I have.

Q. Is this statement that you produce here a correct statement of that legislation and of these contracts? A. Yes, sir; it is.

Statement produced by the witness is as follows:—

The Pennsylvania Coal Company was incorporated by Act No. 73 of the General Assembly of the State of Pennsylvania of the Laws of 1838, which Act gave said corporation the right of "transacting the usual business of companies engaged in mining, transporting to market and selling of coal and the other products of coal mines" and for that purpose gave the corporation power to purchase or lease coal lands in Pennsylvania and the power to "construct railroads with one or more tracks and to operate railroads so constructed."

By an Act of the General Assembly of Pennsylvania, No. 140, of the Laws of 1853, said Pennsylvania Coal Company was authorized to "extend its two tracks of railroad with the necessary turn-outs and other appendages, from any points thereof, in an easterly direction through the counties of Luzerne, Wayne and Pike, or along the Bushkill Creek in the county of Monroe to connect with the New York & Erie Railroad" and also to "connect or consolidate with, or lease, some railroad or canal in the said states of New Jersey or New York and acquire, hold and exercise the rights, privileges and franchises of such corporation."

By an Act of the General Assembly of Pennsylvania No. 344, of the Laws of 1861, said Pennsylvania Coal Company, in case of the construction of said extension of its railroad to a point of connection with the New York & Erie Railroad at some point in the county of Pike, was given the right to lease to the New York & Erie Railroad Company or to the Erie Railway Company, for a term of years, that portion of the railroad so extended."

The Erie Railway Company was the successor to the rights, privileges, franchises and property of the New York & Erie Railroad Company, which owned and operated a railroad extending from the Hudson River to points west of Deposit, N. Y., with various branches.

The New York, Lake Erie & Western Railroad Company was the successor to the rights, privileges, franchises and property of the Erie Railway Company.

The Erie Railroad Company is the successor to the rights, privileges, franchises and property of the New York, Lake Erie & Western Railroad Company.

By Chapter 66 of the Laws of 1862 of the State of New York, the organization of said Erie Railway Company was ratified and confirmed, and said company was granted certain other rights, and it was provided:

> "And if any other corporation, duly organized or to be organized in the State of New Jersey or Pennsylvania shall undertake to construct a coal road and to connect the same with the road of the Erie Railway Company between Oxford station in Orange County and Deposit, in the county of Delaware, for the transportation of coal, said Erie Railway Company is hereby authorized to lease the said coal road, and to contract for the leasing and operation of the same, and for the transportation of coal over said coal road and upon any road that may be owned or operated by said Erie Railway Company."

Pursuant to such authority, the Erie Railway Company entered into a contract, dated June 9th, 1862, with the Pennsylvania Coal Company, whereby said Pennsylvania

Coal Company agreed to construct a railroad from its works at Hawley, Pa., at the terminus of its Gravity Railroad, to a connection with the railroad of the Erie Railway Company at Lackawaxen, Pa., and to lease the same to the Erie Railway Company. Lackawaxen, Pa., is in Pike County on the road of the Erie Railroad Company, formerly the road of the Erie Railway Company and of the New York and Erie Railroad Company, between Oxford Station and Deposit.

The Erie Railway Company agreed to provide all locomotives and cars necessary for transporting the coal of the Pennsylvania Coal Company from Hawley to the Hudson River, and intermediate stations, to procure which the Pennsylvania Coal Company agreed on request to loan the Erie Railway Company funds not to exceed $500,000. The Pennsylvania Coal Company agreed to furnish and deliver to the Erie Railway Company at Hawley, to be transported to the Hudson River, and intermediate stations, the first year after the opening of the railroad from Hawley to Lackawaxen, 200,000 tons of anthracite coal; during the second year 400,000 tons; during the third year 500,000 tons; and during each succeeding year 600,000 tons,—the Erie Railway Company agreeing to transport additional quantities of coal upon a specified notice from the coal Company that such transportation would be required, up to 900,000 tons per year.

The Erie Railway Company agreed to pay the Coal Company 50 cents per ton liquidated damages in case it should fail to receive and transport any portion of the tonnage referred to, and the Pennsylvania Coal Company agreed to pay a like sum as liquidated damages if it should fail to furnish the tonnage as it agreed to. The Pennsylvania Company agreed to furnish fuel coal to the Erie Railway Company at Hawley.

Under date of June 9th, 1862, the Pennsylvania Coal Company contracted with John Hilton for the construction of said railway from Hawley to Lackawaxen, the performance of said contract was guaranteed by the Erie Railway Company under the same date. Said railroad from Lackawaxen to Hawley was thereafter completed, and under date

of January 1st, 1864, was leased to the Erie Railway Company during the continuance of the corporate organization of the parties subject to termination by either party after the expiration of twenty-five years from the date of the lease.

Under date of February 1st, 1865, the Erie Railway Company gave to the Pennsylvania Coal Company its bond for $500,000, advanced to it by the Pennsylvania Coal Company for the purchase of locomotives and cars in accordance with the agreement of June 9th, 1862, above referred to.

Under date of March 3rd, 1866, the Pennsylvania Coal Company notified the Erie Railway Company, pursuant to said contract of June 9th, 1862, that the annual quantity of coal to be transported by the Erie Raiload Company under such contract after the commencement of the year 1867 would be increased to the extent of 150,000 gross tons.

In 1866, the Erie Railway Company, on account of the increased cost of transportation, suspended transportation of coal under said contract of June 9th, 1862, subject to payment of the stipulated liquidated damages of 50 cents per ton on coal offered for transportation, and thereupon:

Under date of July 12, 1866, the Pennsylvania Coal Company entered into an agreement with the Erie Railway Company modifying the agreement of June 9th, 1862, above referred to, as to the transportation of coal by the Erie Railway Company for the Pennsylvania Coal Company from July 18th, 1866, to December 31st, 1869.

Under date of June 25th, 1868, the Pennsylvania Coal Company notified the Erie Railway Company, pursuant to the provisions of said contract of June 9th, 1862, that the quantity of coal to be transported for it by the railway company under the said contract from and after the commencement of the year 1869, should be 900,000 tons per year.

Under date of May 10th, 1869, the Pennsylvania Coal Company and the Erie Railway Company agreed to re-new and continue in force the said agreement of July 12th, 1866, until 10 years after the close of the year 1869.

Under date of August 10th, 1869, the Pennsylvania Coal Company and the Erie Railway Company agreed that the

amount of coal to be transported annually by the railway company for the coal company under the aforesaid agreements should be 1,200,000 tons per year from December, 1869, to the close of the year 1879.

Under agreements dated August 23rd, 1869, and January 12, 1870, between the Erie Railway Company and the Pennsylvania Coal Company the railway company undertook to and did construct a coal pier at Weehawken, N. J., for the purpose of unloading from cars coal transported for the coal company and the coal company advanced the cost thereof to the amount of $100,000, which was repaid by the railway company to the coal company, under the terms of such agreements.

Under date of November 20th, 1869, the Erie Railway Company and the Pennsylvania Coal Company entered into an agreement whereby the coal company paid for 672 cars, which were put into the possession of the railway company for the transportation of coal for the coal company under the existing contracts between the two companies, for which amount the railway company agreed to and did re-imburse the coal company with interest, by monthly installments.

In the year 1875, Hugh J. Jewett was duly appointed receiver of the rights, privileges, franchises and property of the Erie Railway Company and by the foreclosure of a mortgage covering such rights, privileges, franchises and property, the sale of such property upon foreclosure, and the re-organization of said Erie Railway Company in the year 1878, a new corporation, designated as the New York, Lake Erie & Western Railroad Company, became the lawful owner of the rights, privileges, franchises and property of said Erie Railway Company.

Under date of May 14th, 1878, by an agreement between the Pennsylvania Coal Company and the Erie Railway Company, Hugh J. Jewett, as receiver of the Erie Railway Company, and the New York, Lake Erie & Western Railroad Company, it was agreed that the coal of the coal company should be transported by said receiver and by the New York, Lake Erie & Western Railroad Company during the 6 months following May 14th, 1878, without prejudice to the

claims of either party as to whether the existing contracts for the transportation of the coal company's coal and the lease of the coal company's railroad from Hawley to Lackawaxen, above referred to, and designated as the Hawley Branch, had been terminated by the sale of the property and rights of the Erie Railway Company upon foreclosure and the transfer of the same to the New York, Lake Erie & Western Railroad Company. By various stipulations this agreement was afterwards extended to November 4th, 1879.

Under date of September 1st, 1878, the New York, Lake Erie & Western Railroad Company and the Pennsylvania Coal Company entered into an agreement, subject to the aforesaid agreement dated May 14th, 1878, for the transportation of coal for the coal company by the railroad company from Hawley Pa., to Weehawken, N. J., and Newburgh, N. Y., and the intermediate stations, to a minimum amount of 800,000 tons per annum, or thereabouts, and also to points in the west, and whereby the railroad company agreed to pay the coal company rental for the use of the Hawley Branch. This agreement was to continue in force until December 1st, 1881, and was, by agreement dated June 9th, 1881, modified and extended to December 1st, 1886, as modified.

Under date of Nov. 4th, 1882, the Pennsylvania Coal Company and the New York, Lake Erie and Western Railroad Company entered into agreements whereby the railroad company agreed to procure to be organized a railroad corporation to construct and complete a railroad from Hawley, Pa., to Pittston, Pa., to connect with the Hawley Branch, above mentioned, of the Pennsylvania Coal Company at Hawley, and to take the place of the narrow gauge road used by the coal company for the transportation of its coal from the mines to Hawley. The coal company agreed to grant to the new corporation such of its lands as might be required for the construction of its railroad, and to sell or lease in perpetuity to the new company the Hawley Branch from Hawley to Lackawaxen and to accept in payment of such Branch $500,000 of the bonds of the new company and to buy, or procure to be bought, in

addition thereto, $1,500,000 of said bonds at par out of a total issue not to exceed $3,000,000 and not to exceed the cost of the new railroad and of purchasing the Hawley Branch. The New York, Lake Erie & Western Railroad Company agreed, upon the completion of said new railroad from Pittston to Hawley and the lease or sale of the Hawley Branch, to procure to be transported without trans-shipment over the continuous line of railroad to Lackawaxen thus formed, and thence over its own line of railroad to points reached thereby, all eastbound coal of the coal company to be delivered to the railroad company at the mines or breakers of the coal company for a period of 25 years from November 4th, 1882, and all of the claims of the parties against each other arising out of previous contracts were released. By this agreement the coal company also agreed to ship its entire product destined to or via points west or north of Pittston over the lines of the New York, Lake Erie & Western Railroad Company, and the railroad company agreed to transport the same or cause it to be transported.

On November 6th, 1882 the Erie & Wyoming Valley Railroad Company was incorporated under the laws of the State of Pennsylvania with an authorized capital stock of $3,000,000 in 60,000 shares of $50 each for the purpose of constructing, maintaining and operating a railroad from Fort Griffith (Pittston) to Lackawaxen, in accordance with the agreement of November 4th, 1882, aforesaid.

Under date of March 14th, 1883, the New York, Lake Erie & Western Railroad Company conveyed to the Erie and Wyoming Valley Railroad Company all the right, title and interest of the New York, Lake Erie and Western Railroad Company acquired, or to be acquired, under the said contract of November 4th, 1882, with the Pennsylvania Coal Company in and to the rights of way, land and railroad facilities described in said contract, including the Hawley Branch from Hawley to Lackawaxen, as well as the rights to use the property of the coal company between Pittston and Hawley, in consideration of which the New York, Lake Erie & Western Rail-

road Company was entitled to receive $1,250,000 par value of the capital stock of the Erie & Wyoming Valley Railroad Company.

Under date of April 10th, 1883, an agreement was entered into between the Erie & Wyoming Valley Railroad Company, Pennsylvania Coal Company and the New York, Lake Erie & Western Railroad Company wherein it was recited that the Erie & Wyoming Valley Railroad Company had been organized pursuant to the agreement of November 4th, 1882, aforesaid, between the Pennsylvania Coal Company and the New York, Lake Erie & Western Railroad Company and whereby the Erie & Wyoming Valley Railroad Company assumed all the obligations, covenants and agreements provided to be kept and performed by it under said agreement of November 4th, 1882, to the same extent as if it had been a party to said agreement in the first instance.

Under date of May 1, 1883, 29,976 shares of the capital stock of the Erie and Wyoming Valley Railroad Company were issued to H. J. Jewett, President of the New York, Lake Erie and Western Railroad Company, as Trustee for that Company.

Under date of June 12th, 1884, the New York, Lake Erie & Western Railroad Company and the Pennsylvania Coal Company entered into an agreement whereby the Pennsylvania Coal Company agreed to take additional bonds of the Erie & Wyoming Valley Railroad Company at par to the amount of $500,000, and the New York, Lake Erie & Western Railroad Company agreed to transfer to the Pennsylvania Coal Company $500,000 par value of the paid up capital stock of the Erie & Wyoming Valley Railroad Company owned by it, which was done and the New York, Lake Erie & Western Railroad Company and the Pennsylvania Coal Company agreed to contribute such further funds as might be required for the completion of the construction of the railroad of the Erie & Wyoming Valley Railroad Company, and to receive therefor stock or bonds of that company at par. The New York, Lake Erie & Western Railroad Company agreed,

upon the completion of the railroad of the Erie & Wyoming Valley Railroad Company, or at any time within 5 years thereafter, to take a lease of the property of said Erie & Wyoming Valley Railroad Company upon the request of the holders of a majority of the stock of that company other than the stock held by the New York, Lake Erie & Western Railroad Company.

Under date of June 12th, 1884, the New York, Lake Erie & Western Railroad Company and the Erie & Wyoming Valley Railroad Company entered into an agreement providing for the making of such a lease by the latter to the former for a term of thirty years from June 12th, 1884, if it should be demanded by the Erie & Wyoming Valley Railroad Company or the holders of a majority of its stock, other than the stock held by the New York, Lake Erie & Western Railroad Company, within 5 years after the completion of the railroad of the Erie & Wyoming Valley Railroad Company.

Under date of June 13, 1884, the Erie Railroad Company transferred to E. H. Mead, as Treasurer of the Pennsylvania Coal Company, 10,000 shares of the stock of the Erie & Wyoming Valley Railroad Company.

Under date of October 16, 1884, the New York, Lake Erie & Western Railroad Company transferred to E. H. Mead, as Treasurer of the Pennsylvania Coal Company, 200 shares of the stock of the Erie & Wyoming Valley Railroad Company.

Under date of November 15, 1884, 9 shares of the stock of the Erie & Wyoming Valley Railroad Company were issued to H. J. Jewett, President of the New York, Lake Erie & Western Railroad Company, as Trustee for that Company.

On July 2, 1885, 5,000 shares of the stock of the Erie & Wyoming Valley Railroad Company standing in the name of H. J. Jewett, President of the New York, Lake Erie & Western Railroad Company, as Trustee for that Company, were cancelled.

By deed dated December 30th, 1885, the Pennsylvania Coal Company conveyed to the Erie & Wyoming Valley

Railroad Company the railroad between Lackawaxen, Pa., and Hawley, Pa., known as the Hawley Branch of the Pennsylvania Coal Company's railroad and referred to in divers agreements above mentioned.

Under date of June 23rd, 1886, the Erie & Wyoming Valley Railroad Company leased to the New York, Lake Erie & Western Railroad Company the Hawley Branch, being that part of its railroad extending from Hawley, Pa., to Lackawaxen, Pa., for a term of 25 years from January 1st, 1886, subject, however, as to the duration of such period, to the agreement of June 12th, 1884, above referred to, if a lease of the entire railroad of the Erie & Wyoming Valley Railroad Company should be made.

Under date of February 2nd, 1898, the Erie & Wyoming Valley Railroad Company granted to the Erie Railroad Company trackage rights from Hawley to connections with other railroads and tracks at Jessup, Pa., Avoca, Pa., Scranton, Pa., Wyoming, Pa., and Susquehanna Junction, Pa., for the transportation of through coal traffic between Hawley and such junctions, and not for other traffic, except in connection with the New York, Susquehanna & Western Railroad Company, or the Susquehanna Connecting Railroad Company at Wyoming and Susquehanna Junction, and not for the purpose of handling traffic to or from industries on the Erie & Wyoming Valley Railroad Company's line, except where the coal might be all shipped, owned or controlled by the Hillside Coal & Iron Company or by the Erie Railroad Company. This trackage agreement was made for the same term as the agreement of February 2nd, 1898, between the Erie Railroad Company, the Pennsylvania Coal Company and the Erie & Wyoming Valley Railroad Company referred to below.

Under date of February 2nd, 1898, an agreement was made between the Pennsylvania Coal Company, Erie & Wyoming Valley Railroad Company and the Erie Railroad Company, whereby all of the existing agreements above named were cancelled and terminated, excepting

the lease from the Erie & Wyoming Valley Railroad Company to the Erie Railroad Company dated June 23rd, 1886, and the aforesaid trackage agreement of February 2nd, 1898, and whereby the Coal Company agreed to deliver to the Erie & Wyoming Valley Railroad Company for transportation all coal mined, produced or controlled by said coal company, except coal mined through collieries situated on other railroads and except such coal as might be destined to points not reached by the Erie Railroad Company and its connections as advantageously as by other railroads, and the Erie & Wyoming Valley Railroad Company agreed to accept all such coal delivered to it for transportation to destination to the Erie Railroad Company at Hawley, if eastbound, and if north or west bound to deliver it for transportation by the Erie Company to destination at Avoca, Jessup or any other junction point equally convenient to the Erie & Wyoming Valley Railroad Company, which the Erie Railroad might from time to time designate. This contract was made effective until December 31st, 1909, and for one year thereafter unless the coal company should give written notice to the Erie Railroad Company, prior to December 31st, 1909, of its desire that the contract should not continue for the additional year.

In connection with the entering into said agreements of February 2, 1898, the Erie Railroad Company sold and transferred the remaining stock of the Erie & Wyoming Valley Railroad Company held by it to the amount of 14,800 shares, on February 3rd, 1898, and March 8, 1898, to J. T. Sweasy and Arthur Starke, individuals designated by the Pennsylvania Coal Company.

Under date of March 20th, 1901, the aforesaid contract of February 2nd, 1898, was rescinded and abrogated by agreement.

The Government reserves the right to cross examine this witness at some future time if so advised.

MARTIN P. BLAUVELT, a witness called on behalf of the Erie Railroad Company, having been heretofore sworn, was examined as follows:—

By JUDGE MOOT:

Q. As Comptroller of the Erie Railroad Company you have prepared some exhibits for the record along the lines of the exhibits prepared for us in the Hearst case, have you not? A. Yes, sir; for the Erie and for the New York, Susquehanna and Western.

Q. The first statement that you hold in your hand, at the top of the page, is a statement of what, for what purpose? A. A statement showing the percentage of empty and loaded cars hauled one mile over the New York, Susquehanna and Western and Wilkes-Barre and Eastern Railroads to and from the anthracite coal field, in the years ending June 30th, the object being to show the tonnage moved from the coal fields in cars, and that the tonnage in the opposite direction is very light.

Q. In other words, a large empty tonnage to the coal fields and a large loaded tonnage from the coal fields? A. That is right.

Q. Just below that on the same page is another statement, for what purpose? A. That shows practically the same information in a little different way.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 21.")

Q. Immediately following that page is another page, which you have prepared, by years from 1890 to 1908 inclusive, showing what? A. A statement (by calendar years) showing average rates per gross ton received by various railroad companies on all anthracite coal from mines to New York tidewater points, as per tariffs on file with the Interstate Commerce Commission.

Q. That is per gross ton? A. Yes, sir.

Q. If that average rate were at the net tons of two thousand pounds, which is the ton on which rates are ordinarily given and figured except in the coal business,

about what difference would that make? A. It would make about twenty cents a ton difference.

Q. In other words, for 1908, instead of the average rate received by the Erie Company being about one dollar and forty-three cents, it would be about what? A. It would be about one dollar and twenty-eight cents.

Q. The Susquehanna is one dollar and forty-six cents instead of one dollar and forty-three cents. That would be about one dollar and thirty cents? A. One dollar and thirty cents or one dollar and thirty-one cents.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 22.")

Q. Next following that statement is a statement showing what? A. A statement of various through rates in effect, showing the through rate, the Erie Railroad Company's proportion of such through rate, and the Erie Railroad Company's local rate to the junction point where freight under such rates leaves the Erie line.

Q. It gives a fair idea, does it, of the line point rates and line point divisions of line point rates in this part of the country between the Erie and its connections? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 23.")

Q. The next statement you have is what? A. A statement showing average rate per ton and average rate per ton per mile on all freight (exclusive of anthracite coal) between tidewater at New York and Scranton, Pennsylvania, for the fiscal years ending June 30th, 1904, 1905, 1906, 1907 and 1908.

Q. That is on all freight? A. Yes, sir. Exclusive of anthracite coal.

Q. So as to show how the freight rates on other freight compare with the freight rates on anthracite coal? A. Yes, sir.

Q. That exhibit consists of two pages, does it not? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No.)

Q. The next statement you have is what? A. A statement showing the average rate per ton and average rate per ton per mile on all freight (exclusive of anthracite coal) between tidewater at New York and Carbondale, Pennsylvania, for the fiscal years ending June 30th, 1904, 1905, 1906, 1907 and 1908.

Q. The one we just had was Scranton, and now you have given us Carbondale? A. Yes, sir.

Q. That also consists of two pages? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 25.")

Q. The next statement you have is what? A. Statement showing total operating expenses of the Jefferson and Wyoming Divisions, by months, for the fiscal years ending June 30th, 1904 and 1908.

Q. Those divisions are divisions which it has appeared before are largely due to this anthracite coal traffic? A. Yes, sir.

Q. You have taken those two years for the purpose of comparing the operating expenses in 1904 and at the present time so that it can be seen at a glance? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 26.")

Q. Your next one is what? A. A statement showing the percentage of empty and loaded cars hauled one mile over the Jefferson and Wyoming Divisions to and from the anthracite coal fields and the percentage of loaded and empty car mileage on the Erie System, eastbound and westbound, both separately, years ending June 30th, 1904, 1905, 1906, 1907 and 1908.

Q. Those are not simply coal cars, but they are all cars? A. All cars.

(Statement produced and identified by the witness of-

fered in evidence by Judge Moot and marked "Erie Exhibit No. 27.")

Q. Your next statement is what? A. A statement showing passengers carried one mile, for the fiscal years ending June 30th, from 1900 to 1908 inclusive, on the Jefferson Division, and from 1902 to 1908 inclusive, on the Wyoming Division.

Q. You have not the figures for 1900 and 1901 of the Wyoming Division? A. No, sir.

Q. At that time the Erie was not responsible for operating its business? A. No, sir. Not the Wyoming.

Q. Before I put that statement in evidence state whether these figures indicate a large or a small passenger business. A. Small.

Q. Very small? A. Yes, sir; a very small passenger business.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 28.")

Q. Your next statement is what? A. A statement showing tons and tons one mile of merchandise and coal transported over Jefferson and Wyoming Divisions; also merchandise percentage of total tons one mile, for fiscal years ending June 30th, from 1901 to 1908 inclusive, on the Jefferson Division, and for the four months ending June 30th, 1901, and the years ending June 30th, 1902 to 1908 inclusive, on the Wyoming Division.

Q. Another way of comparing the merchandise and coal rates? A. No. It is a comparison of the merchandise percentage of traffic hauled, the extent of the merchandise to the coal traffic.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 29.")

Q. Your next statement is what? A. A statement showing the passengers carried one mile, for the fiscal years ending June 30th, 1900 to 1908 inclusive, on the Wilkes-Barre and Eastern Railroad Company.

Q. And that statement shows an exceedingly small passenger business? A. Very small.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 30.")

Q. Your next statement is what? A. A statement showing tons and tons one mile of merchandise and coal transported over Wilkes-Barre and Eastern Railroad; also merchandise percentages of total tons one mile, for fiscal years ending June 30th, 1901 to 1908 inclusive.

Q. That again exhibits a comparison to be made of the relative extent of the merchandise business as compared with the coal business over that road? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 31")

Q. What is your next statement? A. A statement showing the gross earnings of the Erie Railroad Company for the years ending June 30th, 1900 to 1908 inclusive, and the amounts paid to labor, the fuel consumed, the cost of fuel and the average cost per ton of fuel.

Q. These items under Gross Earnings being some of the principal items of the expense in operating the railroad? A. Yes, sir.

Q. This statement furnishes a way to observe the gross and percentage increase on these various items? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 32.")

Q. Your next statement is what? A. A statement showing anthracite coal tonnage transported by the New York, Susquehanna and Western Railroad Company and the Wilkes-Barre and Eastern Railroad Company during the years ending June 30th, 1903 to 1908 inclusive.

Q. Giving the different sizes? A. Yes, sir.

Q. That would enable one to observe how that business has increased or decreased in gross, and also these various sizes? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 33.")

Q. Your next statement is what? A. An income account of the New York Susquehanna and Western Railroad Company for the years from 1899 to 1908 inclusive.

Q. That gives a basis of comparing the income of that railroad for freight and passengers, mail, coal, express, milk and also its operating expenses, and like items? A. Yes, sir. And surplus or deficit.

Q. It also gives an idea of the surplus or deficit of the company resulting from operation? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 34.")

Q. What is your next statement? A. A statement of the tariff rates on anthracite coal from mines in the Wyoming Region, shipped via the New York, Susquehanna and Western Railroad to tidewater during the period March 1st, 1896, to date, showing the changes from time to time in the tariff rates.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 35.")

Q. What is the next one? A. A statement showing the tariff rates on anthracite coal from mines in the Wyoming region, shipped via the Erie Railroad to tidewater and Newburgh, New York, during the period January 1st, 1890, to date, showing the changes from time to time.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 36.")

Q. Your next statement is what? A. A statement showing the cost of producing fresh mined coal of all sizes by the Hillside Coal and Iron Company during the fiscal years ending June 30th, 1905 to 1908, both inclusive. Also of prepared sizes and the allowance made as cost per ton of producing coal smaller than prepared.

Q. Tell us how that allowance is made, how you figure that. A. I think the second paragraph shows. The first item is the cost of mining all coal, and that includes coal of all sizes, and the second statement is based on the first,

and the allowance made is the cost of producing Pea and smaller sizes and is estimated as being ten per cent. less than was paid by the Hillside Coal and Iron Company to the various contractors on the basis of what is known as the sixty-five per cent. contracts. From the total cost estimated on that basis, we deducted from the cost of producing all coal and then divided the balance of the cost by the number of tons of prepared coal produced, arriving at the cost of producing prepared coal on that basis.

Q. Suppose, in short, that the company in question produced a million tons of coal, and four hundred thousand tons of that coal was small sizes of coal, and it cost to produce that million tons of coal two millions of dollars, so that it would be an average cost on all sizes of two dollars a ton. How would you work the rest of it out on this ten per cent. allowance basis? A. The cost of producing the million tons would we $2,000,000. We would take for the four hundred thousand tons of coal of Pea and smaller ten per cent. less than the price we would pay for similar coal purchased under sixty-five per cent. contracts, and deduct the total arrived at by multiplying the four hundred thousand tons by those prices from the $2,000,000. Then we would divide that balance by the six hundred thousand tons of sizes above Pea into the result as the cost, and arrive at the cost of mining coal of sizes above Pea.

Q. In other words, that is on the theory that you do not try to produce any smaller sizes, but you try to produce all the prepared sizes you can? A. Yes, sir. And you endeavor to produce Chestnut coal and sizes larger, and that the sizes smaller than Chestnut are a by-product, and if we allow as the cost of producing these sizes, practically all they will bring in the market, we have made full allowance for the cost of producing the by-product, and that the coal we start out to produce cost us the difference between the value of the by-product and the cost of producing that coal.

Q. In other words, as you could buy these smaller sizes from independent producers on the basis of the

sixty-five per cent. contracts, and you figure those fellows would make something on that, you put that in arbitrarily at ten per cent.? A. Yes, sir. That is an arbitrary figure.

Q. Is this something that you have just got up for this case? A. No, sir. That has always been the basis on which we figured the cost of producing prepared sizes. We have always done it.

Q. You have always figured your cost of prepared coal in this way? A. Yes, sir.

Q. With this same ten per cent. arbitrary allowance from the sum at which you could buy that coal under the sixty-five per cent. contracts? A. Yes, sir.

(Statement produced and identified by the witness offered in evidence by Judge Moot and Marked "Erie Exhibit No. 37.")

Q. Your next statement is what? A. A statement showing total tonnage mined, cost, including general expenses and taxes, of producing coal of sizes above Pea, Pea and smaller, and all sizes, at the Erie Colliery of the Hillside Coal and Iron Company, and the tidewater circular price and sixty-five per cent. of tidewater circular prices, by months, for the period January, 1907, to and including December, 1908.

Q. The object of that statement is to put on one page the different elements with which to make the computation as to whether that mine on the sixty-five per cent. basis or on the tidewater circular price basis was a making or losing proposition by months as it was operated? A. Yes, sir. And the variation from month to month.

Q. And it does show that sometimes the mine was producing coal at an advantage to the company as compared with the sixty-five per cent. basis of the tidewater price, and sometimes it was not? A. That is right.

Q. I suppose nobody could tell in advance whether it would or would not? A. No, sir.

Q. That might depend on gas explosions, fire, breakdowns or different things? A. You could not tell, although we might make quite steadily. You could not

tell when you started out. I have attached a statement showing the working of that breaker and of the mines, the number of days, the number of starts, the number of days idle, and actual hours of lost time, and the causes of such number of hours lost time.

Q. I see in that statement, "Lost account no coal." What does that item mean? A. There was not enough coal from the mine to keep the breaker running.

Q. The men could not mine there fast enough to run the breaker some of the time? A. No. At least, they did not.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 38.")

Cross examination.

By MR. MCREYNOLDS:

Q. Are and have the tariff rates on coals from the Lackawanna Region moving to tidewater by way of Carbondale and by way of Honesdale been the same? A. Yes, sir.

Q. The published rates on coal since 1890 have been the same, whether they are moved all the way over the Erie's lines by Carbondale or whether they are moved by Honesdale? A. Yes, sir; they have been.

Q. Are they now? A. Yes, sir; they are now.

Q. Coals that move by way of Honesdale go from Carbondale over to Honesdale on the tracks of the Delaware and Hudson? A. Yes, sir.

Q. Is all the coal that is taken up by the Erie at Carbondale delivered to it by the Delaware and Hudson, having been taken up by that road at the mines —— A. All that goes out at Carbondale—it really does not go out at Carbondale either—goes over the D. & H. to Honesdale, except Richmond No. 3 and Lackawanna sixty-five per cent. coal bought by the Hillside Company, and delivered to the Erie at Carbondale by the N. Y., O. & W. Railway.

Q. From the mines? A. Yes, sir. There is some little tonnage of coal that goes out via Carbondale that

does not go down to Susquehanna and around that way, but not a heavy tonnage of it.

Q. Does the D. & H. Road deliver coal to the Erie at Carbondale? A. Yes, sir.

Q. It also delivers coal to the Erie at Honesdale? A. Yes, sir.

Q. Is substantially all the coal that is gotten by the Erie at Carbondale delivered to it by the D. & H.? A. Yes, sir.

Q. Does any other road deliver? A. No; nothing at all.

Q. Has the Erie any of its own coal that it gets at Carbondale? A. From its own mines?

Q. Yes. A. Except coming over the D. & H.?

Q. Yes. A. No; none except coming over the D. & H. About five miles north of Carbondale there are two important mines of the Erie, at Forest City. They are not on the D. & H.

Q. All the coals that the Erie gets at Carbondale are delivered to it by the D. & H.? A. Yes, sir.

Q. And all the coal that the Erie gets at Honesdale is delivered to it by the D. & H.? A. Yes, sir.

Q. There is no mine between Carbondale and Honesdale, is there? A. That I do not know.

Q. You have put down here the through rates from the mines by way of Carbondale and Honesdale to Weehawken on the first of January, 1890. Where did you get the information from which that is compiled? A. Those are all tariffs that are on file with the Interstate Commerce Commission.

Q. Can you tell us anything about the divisions between the D. & H. and the Erie of this rate? Commencing with 1890 have you got any information in your office from which that can be obtained? A. I can for some considerable part of the period.

Q. How much of it do you think? A. I could not tell you how many years back I could give you that.

Q. Will you make a memorandum and see what the divisio nof these rates have been? A. I will do so.

Q. Is any coal except coals produced by the mines of

the Delaware and Hudson Railroad Company delivered to the Erie Railroad at Carbondale? A. Oh, yes.

Q. From what points there? A. For instance, from Erie Breaker, and some of the Erie's own mines, Green Ridge,—a number of places. The Erie has two collieries, I think, at Mayfield, nine miles down the Delaware and Hudson, the coal from which has to be moved on the Delaware and Hudson.

Q. The Hillside Coal Company owns some collieries that are reached only by the rails of the Delaware and Hudson; is that correct? A. Yes, sir.

Q. South of Carbondale? A. Yes, sir.

Q. Those coals are brought to you and delivered to you at Carbondale by the Delaware and Hudson? A. Yes, sir.

Q. Are there any others that you recall? A. There are other mines from which the coal is delivered to the Erie at Carbondale by the Delaware and Hudson other than the Delaware and Hudson coal. I cannot tell you how much. There are several. I think Green Ridge is one. I think testimony has been given on that subject. I can furnish that information.

Q. Does any of that coal mined by the Hillside Coal Company and delivered to the Erie by the Delaware and Hudson at Carbondale go to New York tide? A. Very little, if any.

Q. Does the Delaware and Hudson deliver to the Erie any coal at Honesdale except coal which it produces at its own mines? A. Not now.

Q. Has it at any time within recent years? A. I do not think it has since 1901.

Q. Prior to 1901 were there some other coals besides D. & H. coal delivered at Honesdale to the Erie by the Delaware and Hudson? A. I have some recollection that there were, although I am not positive.

Q. Is the Hillside Coal and Iron Company indebted to the Erie Railroad Company? A. Yes, sir.

Q. Largely or otherwise? A. Largely.

Q. How much? A. Several millions of dollars.

Q. Give us a little more accurate estimate. A. I suppose between two and a half and four millions of dollars.

Q. Is that amount increasing or decreasing? A. It has for three or four years been slowly increasing.

Q. Is any interest paid to the Erie Railroad on that debt? A. Yes, sir.

Q. By the Hillside? A. Yes, sir. That represents the increase.

Q. It pays it by adding it to the amount it owes, is that it? A. Yes, sir.

Q. It really does not pay it? A. Not in dollars and cents it does not; no.

Q. How long has that debt existed? A. Some of it goes back into the eighties. There have been times when it has gone down. The Hillside Company has made money and reduced the indebtedness, and then it has turned the other way and gone up. For three or four years it has steadily gone up at the rate of between sixty and one hundred thousand dollars a year.

The Government reserves the right further to cross examine this witness after having an opportunity to inspect the statements produced by him, and in reference to the matters he was asked about.

Re-direct examination.

By JUDGE MOOT:

Q. The Delaware and Hudson Railroad Company connects with the Erie and also various other railroad companies? A. Yes, sir.

Q. It is a producer of coal? A. Yes, sir.

Q. Which it sells to the Erie and other companies under the sixty-five per cent. contracts? A. Yes, sir. It sells to the Hillside.

Q. It is also a carrier of coal? A. Yes, sir.

Q. And as a carrier of coal, I suppose, it does what it does as a seller of coal, it gets the best price it can for what it has to offer? A. It certainly does.

Q. On that basis, I suppose it is a fact, is it not, that the division of the rate between the Erie and the Delaware and Hudson, when it has changed during the last

few years, has generally changed in favor of the Delaware and Hudson rather than the Erie? A. It has. We have been able to hand them a little something, too, at times For instance, we recently took away from them a very large tonnage of coal, a million and a quarter tons a year, that moved from Avoca over to Carbondale; we move that coal rather than pay them the price they asked for transporting it over their line from Avoca to Carbondale. We move that coal from Avoca down to Lackawaxen and up over the Delaware Division and Susquehanna. We took it all away from them.

Q. About how many miles? A. Nearly twice the distance it would move if it would move over the Delaware and Hudson over to the Erie's Jefferson Division. We could control that. We took it away. We could move it that distance and move it cheaper than what we would have to pay them to move it a short distance over their lines, and then we move it over the Jefferson Division and Susquehanna.

Q. The ordinary way of doing it would be to move it over their line and the Jefferson Division? A. That is the natural way.

Q. And pay them for their services? A. Yes, sir. That is the way we always did it for many years.

Q. How recently has this change been made? A. About a year and a quarter. It is not as long as that. Last October.

Q. You said there was a period of time when the Hillside Coal and Iron Company was paying off the Erie instead of running in debt to it. About how much a year was it paying off during the time it was paying off? A. It ran then about the same as the losses have done recently. In other words, it went from probably a hundred thousand dollars a year to three hundred thousand dollars, I think the highest year. I think there is a statement in evidence that shows for a number of years the profits of the Hillside Coal and Iron Company.

Q. There were a number of years during which it was profitable? A. Yes, sir.

Q. Down to about what time? A. 1903.

Q. Then these deficits began? Yes, sir.

Q. To what can you attribute them; to anything except the increased cost of material and labor? A. Yes, sir. One of the important things I recollect is the loss on the coal that it sold to the Erie for supply purposes, and there is another item of something of loss on the Delaware and Hudson coal undoubtedly, and then, of course, the increases in the cost of production which has gone up, increasing the loss.

Q. Various things? A. Various things. It requires an analysis. You take the income account which is in evidence and you can see more or less of it right in that.

Q. What is this statement that you have prepared? (Statement shown witness.) A. This statement shows the increase in the rates of pay to labor of various classes on the Erie Railroad—increase in the average daily compensation.

Q. In various departments of labor for different months in various years from 1899 down to 1908? A. Yes, sir.

Q. Are these months and these years taken for any set purpose except to make a fair comparison? A. That is all.

(Statement produced and identified by the witness offered in evidence by Judge Moot and marked "Erie Exhibit No. 39.")

Re-cross examination.

By MR. MCREYNOLDS:

Q. You said that the Delaware and Hudson Company was demanding from the Erie what the Erie regarded as an excessive price to deliver to it certain coals along its line at Carbondale. Where were those coals picked up by the Delaware and Hudson? A. You mean when I spoke of what the Erie had turned away?

Q. What you had gotten away for the Erie? A. It was delivered to it—it was all picked up by the Delaware

and Hudson—it was taken in train loads from the Erie's local yard. The Erie assembled all the coal and put it in one yard, and it was taken in train loads by the D. & H. to Carbondale from the Erie's yard on the Wyoming Division.

Q. How far would it have been hauled by the D. & H.? A. I have forgotten the distance. I think something like sixteen or seventeen miles. Maybe it is less than that.

Q. How much did they want you to pay them? A. They wanted us to pay them twenty cents a ton, and we had been paying it right along, and we wanted a reduction in that rate.

Q. On all sizes was that? A. Yes, sir.

Q. How far does the Delaware and Hudson haul its own coal which it delivers to the Erie at Carbondale? A. We have no means of knowing. It is Carbondale to us. We do not care where it comes from or what mine it comes from, and have no means of knowing.

Q. You pay the Delaware and Hudson more for coals delivered to you at Carbondale than you do for coals delivered to you at Honesdale, do you not? A. You mean a larger division of the freight rate. Yes; they have a larger division of the freight rate on coal delivered at Carbondale than they have on coal delivered at Honesdale.

Q. The coal that they deliver at Honesdale they haul there through Carbondale, do they not? A. I should rather think they do.

Q. It is twenty-five miles across there? A. I have forgotten the distance. I would not like to say what the distance is. If it is not that, it is practically that. It all originates south of Carbondale.

Q. Practically all the coal that the Delaware and Hudson delivers to the Erie at Honesdale moves to Carbondale and thence over the D. & H. to Honesdale? A. I think so.

Q. And yet, the D. & H. gets a larger net sum for the

coals delivered at Carbondale than it does for the coals delivered at Honesdale? A. They get a larger proportion, a larger percentage of the through rate, and I should think that would have to work out as a net sum.

Q. They get seventy cents for coals delivered at Carbondale? A. Yes, sir.

Q. And they get sixty cents for coals delivered at Honesdale? A. Yes, sir.

Q. Why is the difference? A. I should rather think that that was caused by the fact that they insisted on that division and got it.

By JUDGE MOOT:

Q. Do you know whether it was possible for the Delaware and Hudson to use some other line and take its coal out to Carbondale in some other way if the Erie did not accord them that division of the rate to Carbondale? A. Not just that way. It was possible for the Delaware and Hudson to haul its coal over their line and get as large, if not a larger proportion of the amount of revenue for doing the same thing that the Erie had. Of course, it would not have moved it to Carbondale. It would have moved it south. It would have had just as much gross, and probably as much net, if not more than they get now from the Erie under the present arrangement.

Q. In other words, it is the old problem in all railroading, of how much the through line ought to give the originating line for the traffic it will gather and turn over to it? A. That is something of it, and then, of course, the strength of the originating line to demand and receive probably regulates their end. We have some little lines that we have had an arbitrary of forty miles for ten, and even with a very heavy traffic arrangement like we have with the C. H. & D. Railroad, they have an arbitrary mileage that considerably exceeds their actual miles of road, and a division of the rates. It depends a good deal on their ability to enforce their demands.

Q. That return is largely due to their other railroad connection? A. Yes, sir. If we did not think they could dispose of it some other way, we would not give it.

By Mr. Todd:

Q. Where is the assembling yard of the Delaware and Hudson? A. I said the Erie assembling yard at Avoca, and I think there is another yard at Pleasant Valley Junction. I think Avoca is the one they take it to, but it may be Pleasant Valley Junction. They are right together.

At 4 o'clock P. M. the hearing adjourned to meet at the Astor House, New York City, Friday, June 18th, 1909, at 10.30 o'clock A. M.

Meeting held at the Astor House, New York, Friday, June 18th, 1909, at 10.30 o'clock A. M.

Present.—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. Hon. Adelbert Moot, representing certain defendants.

MARTIN QUICK, a witness called on behalf of the Erie Railroad Company, having been duly sworn, was examined and testified as follows:—

By JUDGE MOOT:

Q. Your age and connection, railway or other, is what? A. My age is forty-seven. Do you want my term of service?

Q. Yes. A. My term of service is thirty years.

Q. In what position? A. Nine years in the freight department, and the balance of the time as traveling auditor, special agent, and for the last three years chief clerk to the general manager.

Q. Have you had made up an exhibit to show the mileage of main tracks, side tracks, and so on, for the Wilkes-Barre and Eastern Railroad, also for the Jefferson Branch, as it is called, and also for the Wyoming Branch, over which coal business is done? A. Yes, sir.

Q. You have that exhibit with you? A. Yes, sir.

(Exhibit produced by the witness.)

Q. This exhibit was made up by what officials? A. By the division engineer, under the direction of the superintendent of the division, and under instructions that I issued as chief clerk to the general manager.

Q. Have you tested this by your records and maps since? A. The main line mileage is correct, and, from my personal knowledge of the property, the tracks as listed there are correct, and I assume that the detailed information as to the mileage is correct.

(Judge Moot offers in evidence exhibit produced by the witness, which is marked "Erie Exhibit No. 40, 6/18/09, C. H. G.")

Cross examination.

By MR. MCREYNOLDS:

Q. Do you have anything to do directly with the anthracite coal business of the Erie road? A. No; not directly. All we handle is the operation of the trains.

Q. The coal is handled in cars specially constructed for that freight, isn't it? A. As a rule.

Q. Most of it is? A. Most of it, yes, sir.

Q. Now and then you put some in a flat car or a box car? A. Yes, sir.

By JUDGE MOOT:

Q. Practically all of your coal that goes West goes in box cars, does it not? A. Yes, sir.

Q. That is to prevent stealing? A. Yes; and to utilize the efficiency of the equipment.

Q. To utilize the empty returning cars? A. Returning empties, yes, sir.

JOHN B. KERR, a witness heretofore sworn, recalled on behalf of the Erie Railroad Company.

By JUDGE MOOT:

Q. When you were on the stand before for the Government, you told us a bit about the Ontario and Western going into the coal fields and making contracts with independent operators there for tonnage and beginning the transportation of anthracite coal from that region. Without going into much detail, about when did it go in? A. The branch was opened into the field July 1st, 1890.

Q. At the time it went in there it went into what I may call the northern end of the field? A. Yes, sir.

Q. It found what railways occupying the northern end of the field? A. The Delaware and Hudson main line, and the Erie through its branches, and the Susquehanna and Western, and the Delaware, Lackawanna and Western by branches from the main line—lateral lines.

Q. The northern field north of Scranton was practically tributary to one or the other of what railways at the time you went in? A. The Delaware and Hudson

and the Erie, and the D., L. & W. immediately about Scranton—north of it.

Q. When you got to Scranton you found the D., L. & W. there? A. Yes.

Q. There is about how much of this coal territory north or northwest of Scranton? A. About twenty or twenty-five miles.

Q. The Ontario and Western goes only to Scranton? A. Yes. That is its southern terminus.

Q. When it was opened did your railway have to do any fighting with any other railways to get in there? A. Yes, sir.

Q. What ones? A. The Erie and the Delaware and Hudson.

Q. The fighting being of what general description? A. The branch which is constructed from the main line to Scranton leaves our main line at Hancock, Delaware County, New York State, and the projected line crossed over the Erie main line, which runs along the west branch of the Delaware River at that point and crosses the Erie tracks and the river by a bridge, and as soon as we had surveyed the line and filed a map, the Erie organized a connecting road between their line and our main line and laid a line across along the route that we had taken, and bought up one or two pieces of right-of-way. One of the pieces was at quite a vital point, near what would be the side of the abutment of the bridge. We commenced proceedings to change the route of their road, and the court finally changed it to a route that did not interfere with ours, and then we commenced condemnation proceedings to acquire the land which they had bought for this connecting road, and we were successful in that also. At Carbondale, in Pennsylvania, our line had to cross the lower part of the yard occupied by the Delaware and Hudson and the Erie jointly at the point of connection of the Delaware and Hudson with the Jefferson Junction branch of the Erie. We also crossed the D. & H. gravity tracks on their main line several points below. After we had filed our map and made the appropriation, the Delaware

and Hudson commenced a proceeding to enjoin us from entering upon their land and prosecuting the work. That was litigated, and the preliminary injunction they had asked for was denied after quite a long fight, and after we proposed some slight amendment in the line, and finally their opposition was abandoned and we got our line finally constructed.

Q. So that in substance, it is a true statement, I infer, that you had to fight your way in the courts against the Erie and the Delaware and Hudson independently and establish your line legally before you were able to condemn the land or construct your line so as to open your line? A. Yes, sir.

Q. And I infer that must have taken two or three years time before you got through? A. It took quite a little time, yes.

Q. But finally, in 1890, you opened your line for business? A. Yes; the 1st of July.

Q. As I remember your testimony before, the tonnage bought by you by contract with Mr. Richmond, and these other men, was about five hundred thousand tons? A. Yes, sir.

Q. Which gradually increased after that time? A. Yes, sir. The first year the road was opened we carried more than that. We carried about seven hundred thousand tons.

Q. Then it dropped down a little? A. Then it increased after that. The next year and the following year, for various causes, it decreased, but after that it increased steadily until it has kept along the present volume.

Q. You are carrying about how many tons the last two or three years? A. About a little under three million.

Q. It appears from the evidence taken here on behalf of the Government that there came a time when there was a proposal by Mr. Fuller, and others, to build a line to Kingston, and they got a charter and started in, and that there was a fight to keep them out. Would that line have gone into this same northern field? A. Yes. It would have been a projection to the Erie and Wyoming, which was then owned by the Pennsylvania Coal Company.

Q. Did your company take any part in opposing the building of that line? A. We did.

Q. Before what tribunal? A. Before the Railroad Commissioners of the State of New York.

Q. Under the provisions of the law of that State that permit an existing railroad to oppose the building of a new one, on the ground that it is not necessary? A. Yes, sir.

Q. If it cannot get the certificate of necessity, then it cannot be built, under the law of the State of New York? A. No, sir.

Q. They succeeded in that fight and got their certificate of necessity for this proposed line? A. They did.

Q. And then matters stood in that position for some six or eight months, and finally, it appears in evidence here, the Erie bought the stock, or a majority of the stock, of the Pennsylvania Coal Company, which was one of the backers of that proposed line. Did your company have anything to do with buying that stock of the Pennsylvania Coal Company in any way? A. No. We wanted to buy it ourselves, but we were not quite big enough.

Q. So you had no hand in it? A. No.

Q. So that that proposed line never was built after that? A. No.

Q. And the lines that tap that twenty miles of territory north of Scranton are still the Erie and Delaware and Hudson and the Ontario and Western? A. Yes, sir.

Q. Did there come a time when you found that mines in that territory were being offered by their owners to the Temple Iron Company for sale? A. Yes.

Q. What mines did you find were being offered to the Temple Iron Company for sale? A. They bought the Simpson and Watkins mines, and the Raymond was also offered. The Raymond was owned by Jones and Williams. The Mount Pleasant was owned by Mr. E. L. Fuller. I think there were some others. The Mount Jessup, I believe.

Q. Did you know anything about what are called the Simpson and Watkins mines being offered to the Temple

Iron Company for sale until that sale had been consummated. A. I had heard they were negotiating for the sale.

Q. The next you knew they had been sold? A. Yes.

Q. When this Raymond and Mount Pleasant were offered for sale to the Temple Iron Company did you learn of those properties being offered for sale to that company? A. Yes; I did.

Q. Did your company investigate those mines with the view to purchasing them? A. Yes.

Q. What became of the mines? A. They were bought by the Elk Hill Coal and Iron Company, which was a mining company, the stock of which was owned by the New York, Ontario and Western Railway Company.

Q. Do you remember whether they were purchased by the Elk Hill Coal and Iron Company at the prices at which they were offered to the Temple Iron Company, or less or more? A. They were offered, I think, at about the same price that they were offered to them.

Q. Do you know whether the Temple Iron Company declined to purchase them at this price, or was it that you bought them a little quicker? A. They were dickering, these people, and some negotiations going on back and forth—so I understand—and we made up our minds on the price that we would offer for them and made offers, and after some negotiations they were closed and we bought them.

Q. Whether the Temple Iron Company themselves actually turned them down or was still hoping to get them at a cheaper price, you could not say yourself? A. I could not say that.

Q. What coal companies did the Ontario and Western ultimately buy the stock in? A. The Scranton Coal Company, which was organized on February 1st, 1899; and they bought the Pine Brook, and Capouse collieries from the Lackawanna Iron and Steel Company; and the Scranton Coal Company subsequently bought the colliery of the Riverside Coal Company, and later a small one called the Black Diamond Coal Company. The Elk Hill

Coal and Iron Company acquired the Raymond and the Mount Pleasant and the Johnson collieries at about the same time. It had of its own previously in operation two collieries.

Q. They were what ones? A. Richmond No. 3 and No. 4. They acquired the New York and Scranton Coal Company's colliery called the Ontario, and the Rush Brook and Blue Ridge collieries, which they combined all together with the Ontario, making one operation of it, and at the same time bought most of the land that was operated by the New York and Scranton and the Rush Brook and Blue Ridge from the New York and Ontario Land Company.

Q. The Ontario and Western got the stock of the Elk Hill Coal and Iron Company about when? A. 1898.

Q. Can you tell us about when these various collieries were acquired? A. Some of the smaller operations, such as the New York and Scranton, the Blue Ridge and the Rush Brook and the Riverside and the West Ridge Coal Company, the Ontario and Western Railway Company had made advances to by mortgage, and some of them got into difficulties, and they were taken over by the Ontario and Western to save the debts, and afterwards were sold by the Ontario and Western to the Elk Hill Company. Those transactions were in 1898 and 1899, but the loans that I refer to had been made previously, in about the time originally that we went into the field, for the purpose of helping the operator develop the properties.

Q. Then, I infer from what you say, that the Ontario and Western coal interests or properties, using that expression in a broad sense, are now represented by the stock of the Elk Hill Coal and Iron Company and the Scranton Coal Company, and those two companies in turn own these various collieries and coal land? A. Yes, sir.

Q. About what proportion of this substantially three million tonnage that the Ontario and Western is now carrying to market is produced by these various collieries

of the Scranton Coal Company and the Elk Hill Coal and Iron Company, as near as you can tell? A. I should think about eighty-five per cent.

Q. The balance, the remaining fifteen or twenty per cent., I assume that is produced by independents? A. Yes, sir. Some small amount by the Delaware and Hudson.

Q. Which goes to market over your line? A. Yes. And the balance by independent operators—from the mines of independent operators.

Q. You speak of the Delaware and Hudson. The Ontario and Western have docks at Cornwell? A. Yes, sir.

Q. Near West Point? A. Southampton, Newburgh Bay.

Q. That is not far from West Point? A. Yes. Just north of the Highlands. Also at Weehawken.

Q. The United States Government has occasion to buy a considerable tonnage of anthracite coal for use at West Point every year, does it not? A. Yes, sir.

Q. It buys it on specifications and bids, and all that sort of thing? A. Yes, sir.

Q. Did the Ontario and Western ever supply the Government with that coal? A. Yes, sir. It supplied it nearly every year, I think, since we opened, until last year, or the year before.

Q. Then some other company got the contract? A. Under bid. The Scranton Coal Company sold the coal to them.

Q. What company is now supplying West Point, having underbid you? A. I think the Delaware and Hudson.

Q. When you lost the contract they got it, I assume? A. Yes, sir.

Q. Can you tell us any of the details of that contest on that particular Government contract or how far apart you were on the bids, or anything of that kind? A. There was a very slight difference in them.

Q. The slight difference was enough to make a difference for you not to get the contract? A. Enough to get them the contract. They advertised for proposals and

received sealed bids, and when the first bids were opened I think the Government threw them all out. I think there were two or three bids. They re-advertised and asked for new bids, and on the second bidding the Delaware and Hudson coal was taken.

Q. You spoke of the fact that some of these mines were bought from the Lackawanna Steel Company, if I understood you correctly? A. Yes, sir.

Q. That was the Steel Company of Scranton that had mines under the city of Scranton? A. Yes, sir.

Q. Do you know whether Mr. Samuel Sloan, the president of the Delaware and Lackawanna Railway Company for many years, was a director in that Lackawanna Steel Company at the time you purchased those mines from that company? A. He was.

Q. He had a railroad right there himself? A. He made a bid for the mines and didn't get them.

Q. He made a bid for them? A. Yes, sir.

Q. I infer the Scranton Coal Company's bid was higher than his? A. It was. So I understood.

Q. What was the theory, if I may ask, on which your company bought these stocks of these coal companies and they in turn bought these coal lands and coal mines? A. When we first went in there, we believed that any investment there would not be justified unless we had contracts with producers of coal for shipment of tonnage when the road was built, and, in fact, we could not raise any capital unless we had such, and we finally secured contracts for a minimum that we thought would warrant the going on with the project, and the assurances were satisfactory to the financial people and they agreed to loan us the money, and we went in there with the idea that we would have nothing at all to do with anything except the transportation of the coal. At first it was really a new coal on the market—of course, it was exactly the same quality as all the coal that went out of that region, but the trade had to be acquired.

Q. Just like a brand of cigars, it had to get a trade? A. Like anything else. The shippers over the road

selected a sales agent to handle the coal for them directly.

Q. Who? A. Dickson and Eddy. They marketed the coal for them and paid the freight, and so forth. That went along for some time, and finally these shippers were dissatisfied and wanted us to arrange to take the coal as other companies did, and we finally did that, and settled with them every month for the coal that they shipped on a sixty per cent. basis. As I have already stated, we had made loans to several of these operators to enable them to develop their properties or to take care of loans that they had in other places, and held a hold on them in that way, in addition to the contract, and after a time, as the consumption of coal increased, and came nearer to the producing capacity of the property ——

Q. Which was when about, would you say? A. The beginning of 1895; along there—many investments in anthracite coal looked to be more desirable, and some of the operators were looking around to sell. At that time we had a very large amount of money invested, not only in the branch line, but improvements on our main line, docks and so forth, and a very large amount of equipment, which was useful only for anthracite coal; and we became impressed with the fact that it was necessary for us to acquire a hold on the tonnage that was tributary to the line, precisely as the other companies had done which had been in there, some of them seventy-five years, and no matter what contracts we had with people, the temptation to sell might be too great for them to stand by their contracts, so that we were forced to take in one or two properties which had been financially unsuccessful in the hands of the promoters, the projectors, and then as the opportunity offered and our ability to purchase increased we made these other purchases, with the idea that we ought to secure certainly a minimum tonnage of at least two million and a half tons to the road for the protection of the capital that was already invested in it.

Q. In order to make your road make a fair return on the capital you had in this business? A. Yes, sir; and to

avoid a loss really of what was invested if the mines should be bought up in the interest of other lines and diverted to them, or the tonnage diverted.

Q. In acquiring these coal companies, or having them acquired, these mines that were acquired, were any of these mines that were acquired mines that had formerly shipped over other lines? A. The Mount Pleasant had shipped over the D., L. & W. The Pine Brook and Capouse, a large amount of coal had been used by the Lackawanna Iron and Steel Company in their own business, furnace business, and the balance of it had been sold to the D., L. & W. Railroad Company. The Johnson at one time was under contract to the Susquehanna and Western, but they had surrendered that contract to the owners of the mine before we purchased it, and the product had been almost entirely shipped over the Ontario and Western. The Raymond, a portion of that tonnage, went at one time to the Erie and some part to the D. & H. The others that we purchased, I think they had been shipping entirely over the O. & W.

Q. You simply made more secure and permanent the hold on tonnage that you had before as to the others? A. Yes, sir. The Johnson for some time, almost the entire time, had gone over the Ontario and Western road. It was a very large operation.

Q. You speak of the manner in which these coal properties were acquired. Was there any attempt made by the officials of the coal companies, or of your company as the owner of the stocks, in acquiring these mines—any attempt made to ascertain anything about the tonnage of the coal unmined, whether it was difficult or easy to mine that coal at much or little expense, or any investigation along those lines made before purchasing the various mines? A. Every one was investigated, and from estimates of tonnage in the ground and the condition of the mine and sizes of the veins, and the probable cost of operation—where a mine had been operated for some time, where we could get it, of course, we investigated to see whether it had been profitable or unprofitable. In every case, of course, we had estimates made by experts of what they considered the tonnage of

coal in the ground. The character of the veins was pretty generally known by workings either in the mine itself or adjoining workings.

Q. After all this investigation by experts, as I understand you, did the question of whether the purchase was made or not depend upon whether, from a purely commercial point of view, it appeared to be a reasonable business investment? A. Yes, sir. In all cases except one or two small operations, where we had mortgages and we had to take them in without very much regard whether they were profitable or unprofitable at the time.

Q. Was there any per cent. of return on the capital invested which you tried to make sure of, if you feel like stating, as a safety point? A. The basis we figured on was interest on the money invested and a sinking fund for the extinguishing of the debt. So far it has worked out rather above our calculations than under.

Q. But, on the whole, your calculations that your experts had made proved pretty accurate, on which you made your purchases? A. Yes, sir; fairly accurate. The estimates of tonnage has been carried out entirely.

Q. In making these purchases are there any risks of the business that you took into account at all one way or the other in this estimate of a sinking fund to extinguish the debt in the end? A. Oh, yes.

Q. What risks? A. The risks by fire in the breakers or in the mines from explosions, falls, squeezes, and then there is a certain percentage of risks by strikes, which, in the period we have been in there, has been pretty large.

(The Government objects to this line of questions. This railroad is not a party to the suit, and its individual transactions throw no light on the case.)

(Counsel for the defendant is perfectly willing to stop taking testimony of this sort if the Government will withdraw their charge that coal is being sold at an exorbitant price, combination prices, as charged in the petition.)

THE WITNESS:—There are very great risks in the business.

Q. Have you experienced any of them except this one

of strikes? A. Yes. In 1903, the Pine Brook breaker burned down, and it took nearly a year to re-build it and get it in operation.

Q. Even though you get the insurance on your breaker, how do you reimburse yourself for the year that your mine, the investment of machinery and the operation of that mine and for help to keep it from being drowned out, or something of that kind when it is not operating—how do you reimburse yourself for the item capital for the year? A. If you had one operation, there is no way to reimburse yourself. The only safety in anthracite mining is to have a group of mines so that when one is idle—forced to be idle—the others will help bear the burden.

Q. In other words, the others can be rushed enough to supply the market demand of that mine until it can be restored? A. Yes. In the case of the Pine Brook, it cost us about $30,000 over and above the insurance to rebuild. It cost us $10,000 a month nearly, or about $110,000, simply to protect the property, the mine itself, during the period it was idle, without anything for improvements or anything of that kind—simply pumping and protection.

Q. To keep the mine alive and in working order? A. Yes, sir. Of course, there was no operation, no business done, and, consequently, there was no profit during that period. We went through the big strike of six months in 1902 and the strike of 1900—that lasted about two months—and the men ceased operations for about six weeks nearly in 1906. We lost one breaker by a cyclone in 1906, the Ontario breaker. It was nearly demolished, and it took us five months to rebuild it. We lost one breaker by fire, but that was an old one, which really was almost abandoned, and it was abandoned afterward. It was not rebuilt. The Riverside breaker was burned. I think those are all the disasters of that sort that had happened. In the case of the Johnson Colliery, which is the largest producer we have, within the last year we had to rebuild entirely a new breaker. We kept the old one in operation until the new one was substantially completed, and therefore had to shut down only thirty days to transfer machinery. The cessation of

operation was only that period of time. That new breaker cost us about $130,000, which has to come out of the property.

Q. In managing these mines, since your company has owned these coal companies and these mines have been owned and controlled by them, how has it been with reference to whether these mines have been kept in operation to their normal producing capacity, or whether they have been kept shut down more or less because their output of coal could not be marketed? A. The only periods when they were shut down has been when coal could not be sold, when the cars of the railroad company were loaded and awaiting orders and where no more cars were delivered to the mines for loading. Simply the production of the mines is only restricted by the ability of our agents to sell the coal. Whenever they can sell coal, it is produced, irrespective of any other condition.

Q. What do you say during this period of time, going back ten years, as to the proportion of the time, broadly and generally, that these mines have been worked and as to the extent to which they have produced, when the agents of these coal companies have been able to sell their output? A. As a general thing, they run to their capacity for about nine months in the year. The other three months—for instance, June, July and August—they are the three dull months, and, of course, there is very little consumption of coal comparatively for domestic purposes, and there are no sales, and consequently they work part time.

Q. In other words, they are like any other manufacturing business—when the demand exists they run full time, and when the demand falls off they fall off accordingly? A. Yes. Frequently we cannot get out enough coal to fill the orders, and sometimes we are bothered by trouble with the men, when we want coal, taking holidays, and that sort of thing. They take more holidays up there than they do in any other place in the country.

Q. The Strike Commission award is in evidence here, so that either side may refer to it without printing, and

it appears in evidence, I believe, that that award was renewed in 1906 after about six weeks' idleness by the men for another three years' time, which expired this last Spring, 1909, and it appears further in evidence that the men were making increased demands for still further concessions and refusing to renew that agreement, and that the companies were taking the position that they should simply renew that agreement for another three years' time, but it does not appear in evidence what did become of that dispute this last Spring. A. It was finally settled by an agreement between the men and the operators to renew the award of 1902 for a further term of three years from April 1st, 1909, the operators making some slight changes which the men had asked in regard to certain privileges they wanted. As far as the rates of pay and the hours of labor, and so forth, were concerned, and the method of settling grievances, the award of the Commissioners was continued in force.

Cross examination.

By MR. MCREYNOLDS:

Q. Is the rate of pay for the miners and laborers now the same as that fixed by the Strike Commission in the Spring of 1903? A. Yes, sir.

Q. How much has the price of coal advanced? A. Since the Spring of 1903?

Q. Since the 1903 award? A. It has not advanced at all.

Q. How much has it advanced since 1902? A. The maximum advance was fifty cents.

Q. What is the minimum advance? A. I mean the maximum price, as I recollect it, in 1902 was four dollars and fifty cents.

Q. And now? A. And now it is five dollars.

Q. That is for the prepared sizes? A. Prepared sizes.

Q. How much have the steam sizes advanced? A. The steam sizes have advanced some, but not as much as that.

Q. About how much? Tell us, please? A. I think

Pea coal is twenty-five cents a ton more, and No. 1 Buckwheat, I think, is twenty cents more.

Q. The advance on the smaller sizes does not affect the rate of wages? A. No. I want to say there, to make it plain, that the wages paid the miners and laborers since 1902 were advanced about fifteen per cent. irrespective of the sliding scale.

Q. Do you at any time attend the weekly meetings of the presidents of the coal carrying roads? A. No, sir.

Q. Never have attended one of them? A. No, sir.

Q. Where are they held? A. I do not know that any are held.

Q. Don't you know the presidents of the coal carrying roads have a weekly meeting? A. I do not.

Q. You do not have information on that subject? A. I haven't any information to that effect, no.

Q. How often do they meet? A. I do not know.

Q. How often do the directors of the Temple Iron Company meet? A. I think they meet once a month.

Q. Who are the directors of the Temple Iron Company? A. I only really know by hearsay.

Q. They are the presidents of these coal carrying roads, are they not? A. Some of them. Mr. Baer, I know, is a member, and Mr. Truesdale, Mr. Thomas, Mr. Underwood, Mr. Fowler.

Q. All presidents of coal carrying roads? A. Yes.

Q. Where do they meet? A. 143 Liberty Street.

Q. Whose office? A. The Temple Iron Company's office, I think. Either that or Mr. Baer's office.

Q. Have you ever attended one of those meetings? A. No. I never attended a meeting of the Temple Iron Company, but I have met there at conferences when strikes were on, as one of a committee I mean—the 1906 strike.

Q. As I understand from your testimony, the New York, Ontario and Western owns all or substantially all the capital of the Scranton Coal Company and the Elk Hill Coal and Iron Company? A. Yes, sir.

Q. And those are mining companies? A. Yes, sir.

Q. Are their books kept separate and distinct from those of the railroad? A. Oh, yes.

Q. What do they show as the result of their mining operations? A. How do you mean? Profit or loss?

Q. Yes. A. For their whole period of years they have shown a profit. On two years they show a loss.

Q. What two years were they? A. The year of the strike, 1902, and 1906 we came out about even.

Q. Do those coal companies charge against themselves the published freight rate on the coals that they ship over that railroad? A. Yes, sir.

Q. They do send coals to New York City? A. Yes, sir.

Q. Over what line does it come? A. New York, Ontario and Western Railroad.

Q. All the way? A. Yes, sir.

Q. Does the New York, Ontario and Western come into New York? A. We have trackage rights over the West Shore from Cornwell to Weehawken, and the use.

Q. How far are those coals hauled, according to the usual route they take? A. The distance from Weehawken to Scranton is two hundred and ten miles. The average haul, I suppose, would be perhaps one hundred and ninety-five or two hundred miles. One hundred and ninety-five miles, practically.

Q. Is that as compared with the routes over which coals come over other lines long or short? A. It is longer than some. It is longer than the D., L. & W. It is about the same as the Erie.

Q. You find the rate a profitable one? A. It has been fairly profitable.

Q. Is it the same rate that the other coal roads charge? A. Our rate is higher than some of the others. Our rate at tidewater now is one dollar and sixty cents, to Weehawken.

Q. That is prepared sizes of coal? A. Prepared sizes.

Q. That is the ordinary price, is it not? A. I think the tariffs of the other roads, some of them, are lower.

Q. What ones? A. The Delaware, Lackawanna and Western.

Q. This differential is allowed for the different points, is it not? A. No. They come into Hoboken. The differential is from Perth Amboy.

Q. How much less are they than you? A. I think they are one dollar and fifty-five cents. I am not positive about that. I know it is less. I think it is one dollar and fifty-five cents.

Q. Does the railroad company furnish these coal companies money for operation? A. Only the original loans.

Q. How much do these coal companies owe the railroad company? A. We have a second mortgage on the Elk Hill and a second mortgage on the Scranton Coal Company.

Q. Amounting to how much? A. The Scranton Coal Company is about a million one hundred thousand dollars, and the Elk Hill is two million and a half, I think it is.

Q. Is the interest paid on these bonds? A. Yes. It has been all along until this last year, when we did not exact it of them because they used their money to buy some additional properties, some small properties. With that exception the interest has been paid.

Q. Does your railroad—the New York, Ontario and Western—deliver any coal to the Erie at Carbondale? A. No. We switch some coal from some of the mines that are tributary to the—we switch some coal from the Lackawanna colliery to the Erie at Carbondale.

Q. Do you deliver any coal to the Erie at Carbondale to be transported on through rates? A. I think there are tariffs in effect from points on the O. & W. to points on the Erie, and they have a tariff to points on our road. I think there is a through tariff with the Erie to the west, to Chicago.

Q. Do you deliver any coals picked up along your line to the Erie at Carbondale to be transported on these through rates to the west? A. I think there was last winter.

Q. What proportion of the through rates do you get? A. That I couldn't tell.

Q. You do not know at all? A. No.

Q. Have you any through shipping arrangement with the D. & H.? A. There are tariffs that were put in at the insistence of people of the D. & H. line, and we have a tariff to points on their line. Then we have another tariff with the D. & H. via Sidney. Ever since the Ontario and Western road was constructed, the Delaware and Hudson has shipped coal over it via Sidney, their line crossing our line at Sidney.

Q. Where is Sidney? A. Sidney is in Delaware County just on the borders of Chenango County, New York State.

Q. What does the D. & H. get for their part of that haul? A. They are different. I do not remember the divisions of the rates. They are through rates to Oswego for Lake shipments, through rates for Utica.

Q. Was that based on mileage? A. Based on mileage; yes, sir.

Q. You give them their proportion of the mileage? A. Not entirely. They get a gathering charge.

Q. How much is that? A. I do not remember that.

Q. Can't you give us an idea? A. A. No; I could not. I do not pay much attention to those railroad rates. I know the tariffs are in effect, and we have had tariffs with them for twenty years.

Q. Who were the people on the D. & H. lines that insisted on you putting in a through tariff? Do you remember? A. There were some two or three little operations there that shipped a carload at a time, and they asked for the tariffs, and they finally were put in.

Q. You said that your railroad—the New York, Ontario and Western—wanted to buy the Pennsylvania Coal Company, but that the other chap got to the post first.

JUDGE MOOT:—He said they were not big enough.

By MR. MCREYNOLDS:

Q. You were not paying enough? A. No.

Q. Why did your road want that company? A. We wanted the tonnage over our line.

Q. Were you in a position to carry all the tonnage of the Pennsylvania Coal Company? A. We could have, yes.

Q. And brought it down to tidewater at New York? A. We have as good a distributing line as any line.

Q. What other line was competing for that tonnage? A. I suppose the Erie, as they finally got it.

Q. What other line still was competing for it? A. Do you mean for the purchase?

Q. No; for the carrying of the tonnage. A. There was no other line that could get in there unless they got the railroad which went with the Pennsylvania Coal Company's stock, the Erie and Wyoming. With that road and our line we could gather up all the tonnage the Pennsylvania Coal Company produced.

Q. And so could the Erie? A. So could the Erie.

Q. And so could the New York, Susquehanna and Western? A. No. I do not think they could have reached it very well. The D., L. & W. might have.

Q. What are the competing lines up there for transportation of coal to New York? A. In our section?

Q. Yes. A. Do you mean the companies controlling their own lines to New York?

Q. Yes. A. The Erie, the Delaware, Lackawanna and Western. The Delaware and Hudson, of course, depends for its New York outlet on some other line.

Q. How about the Lackawanna? A. And the Delaware, Lackawanna and Western.

Q. How did your railroad pay for these various coal companies it bought—by issuing bonds or in cash, or how? A. They loaned their credit in each case to a certain extent by an issue of their notes, secured by first mortgages on the coal properties, the payments on the mortgages being due simultaneously with the due dates of the notes, and the notes in each case were in series. For instance, the Scranton Coal Company's series expires in 1911; the Elk Hill in 1915. They never declared any dividends on their stock until 1904, and they had accumulated surplus earnings, and those earnings were used to make the loans on these second mortgages.

Q. You said when your railroad originally got down into the anthracite region that the producers along the line shipped their coals and sold them through Dickson and Eddy? A. Yes, sir.

Q. And that they appeared dissatisfied with that arrangement? A. Yes, sir.

Q. And then came to the railroad and asked that the railroad take their coals on a sixty per cent. basis? A. Yes, sir.

Q. Why were they dissatisfied with that arrangement, selling through Dickson and Eddy? A. The tonnage from each was comparatively small, and they had to combine in order to make a market, and, of course, these men were simply commission selling agents, and they only made returns to the operator for what they sold during a month, and the result was that they had to carry coal over, balances of coal, and in dull periods they had to carry a great deal of it over, and a good many of them got their money from other companies, through the arrangement they had, every month for all the coal that was shipped, and sometimes, they not being paid for their entire product for the month, it made them very short in the payment of the men, and all that sort of thing, and they wanted to have the business conducted the same as it was on other roads. That was the size of it. Although, when we first went in there, they were very enthusiastic about selling their own coal.

Q. But they found afterwards it paid them better to sell it to you on the sixty per cent. basis than to sell it themselves? A. I presume that they did, because they were anxious to make that arrangement.

Q. And has that arrangement been made with substantially all the operations along your line now? A. Do you mean outside of the Scranton Coal Company?

Q. You control that yourself? A. Yes. They pay the tariff rates of freight. They buy coal from some independent operators, Mt. Jessup, and Pancoast, and several small ones, and part of the product of the Northwest, that belongs to the Temple Iron Company. I do not think of any others at this time.

Re-direct examination.

By JUDGE MOOT:

Q. It appears from the maps in evidence here that the Pennsylvania and the Philadelphia and Reading Railways reach the southern coal fields, and that those fields are also reached, to a certain extent, by the Lehigh; that the Lehigh coal field, the Wyoming coal field, are approached from the east, or easterly, by the Lehigh Valley Railway, the Central Railway of New Jersey, the Delaware, Lackawanna and Western Railway, the New York, Susquehanna and Western Railway; and that on the northerly end the Wyoming field is reached, as you have stated by the Erie, Delaware and Hudson, and the Ontario and Western. Now, as you know that coal field, to what extent is it practicable for the Ontario and Western, reaching this northern field as it does, and there connecting with all the different railways and all the fields—to what extent is it practical for the Ontario and Western to compete with the other railways for the tonnage south of Scranton in the northern field or in the Lehigh field or in the Schuylkill field? A. It is not practicable unless we build down into their territory.

Q. Why not? A. Because all the operations down there now are tributary to some existing line. Unless we build a railroad down to them, and could acquire them by purchase, we could not get the coal. In some cases there are shipments over our road by other lines where they want to reach a market which we reach on joint rates and joint tariffs, and the coal moves that way, but that is on the initiative of the line that serves the breaker to the south of us.

Q. For instance, if some particular man at Oswego was buying a large amount of coal he likes, Markle's coal, and is willing to pay more for it than any other coal, and Markle wants to sell that man, the way to get it over your road for the man direct to Oswego would be by through rate over the Lehigh and the Ontario and Western to Oswego, so as to move his coal up there? A. Yes, sir.

Q. That is what you had in mind? A. Yes, sir.

Q. Assume that these various coal mines and these various fields were not tied up by royalty contracts, or by purchase or lease or otherwise, as they are, to the various railway systems, as the result of seventy-five years' operations, but assume that various independent operators owned all of them and were operating all those mines, but that the various railway lines were located to them just as they are now, changing nothing except the ownership and control of the mines themselves. Then, to what extent would it be practical for the Ontario and Western to compete with the other lines for the tonnage south of Scranton in distance? A. The cost of construction and the length of their haul would be prohibitory, in my judgment.

Q. The line on the ground located to the mine, would have such an advantage over a new line building in that it would practically prohibit the new line building in to take the tonnage away? A. Yes, sir.

Q. Just the same thing as we see in the cities, where various railways reach the city but cannot reach an important industry in that city to take its tonnage away? A. Yes, sir.

Q. The same problem we have in Pittsburgh as between the Pennsylvania Railroad, for instance, and the Wabash, over the tonnage of the various steel companies? A. Yes.

Q. You speak of the fact that your coal books, as I understood you, about broke even in 1906. A. We had a suspension at that time, and I think the Pine Brook, part of the construction of the rebuilding of the Pine Brook breaker and the expense of keeping the mine up, came in that year, too.

Q. Having in mind the various advances that have taken place in the price of prepared sizes and also steam sizes of anthracite coal from 1899 to the present time—about ten years—what is your judgment as to whether the mining of coal at present prices, with the present price of labor and material, and with the present conditions of the mines, as compared with the earlier years, to

1899 and down through 1900, 1901 and 1902—how is it? Are the mines more profitable to-day relatively to any extent than they were in those earlier years? A. I think they are slightly more profitable for the reason that there is a steadier and larger demand for coal. That is, the consumption of coal is nearer to the maximum productive capacity. If we had the same demand and the same consumption that we have now ten years ago, with the wages and cost of mining, that we had then, we would make more money.

Q. You would make more money ten years ago than you would to-day? A. Yes. The price received ten years ago, with the expenses that we had then and the demand that we have to-day, we would make more money.

Q. You would make more money ten years ago than you do to-day? A. Yes.

Q. These advances of steam sizes, I assume, have been advances that have taken place gradually in competition with bituminous coal, which it has not been possible to advance arbitrarily, has it? A. There has been a larger demand for the smaller sizes, the steam sizes, of anthracite coal in the last five years on account of its cleanliness. The cities have insisted on it, and then a great many manufacturing enterprises have concluded it was to their advantage to use the anthracite instead of bituminous, and then there has been an enormous increase in the demand for it for apartment houses, hotels, and such like, that used to burn the larger sizes, and now they have adapted their heating apparatus to the smaller sizes, and that has made a greater increased demand for it.

Q. The advance that has taken place in these smaller sizes has been rather an advance due to better demand for it than any advance of an arbitrary character? A. Yes, sir; entirely that.

Adjourned until Tuesday, June 22d, 1909, at 10.30 A. M., to meet at the Post Office Building in Philadelphia.

Meeting adjourned to Tuesday, June 22d, 1909, postponed until Wednesday, June 23d, 1909, at 10.30 A. M.

Meeting to be held June 23d, 1909, postponed to a date to be fixed.

Met pursuant to notice Wednesday, June 30th, 1909, 10.30 A. M., at the Astor House, New York City.

Present—The Examiner. J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government. J. F. Schaperkotter, Esq., representing Lehigh Valley Railroad Company. F. H. Platt, Esq., and George W. Field, Esq., representing Lehigh Valley Railroad Company and Lehigh Valley Coal Company. John L. Seager, Esq., representing Delaware, Lackawanna and Western Railroad. Hon. Adelbert Moot, representing Hillside Coal and Iron Company; Erie Railroad Company; New York, Susquehanna and Western Railroad Company; Pennsylvania Coal Company; New York, Susquehanna and Western Coal Company; and Clarence Coal Company.

Continuation of testimony in behalf of Lehigh Valley Companies, Erie Railroad, Delaware, Lackawanna and Western Railroad, and other defendants.

CHARLES E. FORSDICK, recalled:—

Mr. Platt offered in evidence the following:—

A document entitled "Detail of Rent of Leased Lines and Guaranties—for the Year ended June 30th, 1908." Marked "Lehigh Valley Exhibit 31, June 30, 1909."

A document entitled "Statement showing Stock and Surplus Capital, Net Gains, and Ratio thereof—by Years—for fifteen Fiscal Periods ended June 30th, 1908. Statement showing Stock Capital, Surplus Capital and Dividend Rates—for fifteen Fiscal Periods ended June 30th,

1908, representing Twenty-nine Semi-annual Dividend Periods. Statement showing Stock Capital, Surplus Capital and Dividend Rates—for nineteen Fiscal Periods ended June 30th, 1908, representing Thirty-seven Semi-annual Dividend Periods." Marked "Lehigh Valley Exhibit 32, June 30, 1909."

A document entitled, "Condensed Classification of Invested and Current Capital—June 30th, 1908, 1904 and 1900 and November 30th, 1896 and 1893, with Approximate Average for Period of Fourteen Years and Seven Months. Consolidated General Balance Sheets—June 30th, 1908 and 1904 and November 30th, 1900, 1896 and 1893." Marked "Lehigh Valley Exhibit 33, June 30, 1909."

A document entitled, "General Balance Sheet of Beaver Meadow Railroad and Coal Company—January 5th, 1853." Marked "Lehigh Valley Exhibit 34, June 30, 1909."

A document entitled, "General Balance Sheet of Hazleton Coal Company—May 8th, 1839." Marked "Lehigh Valley Exhibit 35, June 30, 1909."

A document entitled, "General Balance Sheet of Montrose Railway Company at Time of Foreclosure and Sale September 2d, 1905, and General Balance Sheet of Montrose Railroad Company after Purchase of the Montrose Railway." Marked "Lehigh Valley Exhibit 36, June 30, 1909."

A document entitled, "General Balance Sheet of Ithaca and Athens Railroad Company—June 30th, 1872." Marked "Lehigh Valley Exhibit 37, June 30, 1909."

A document entitled, "General Balance Sheet of Southern Central Railroad at Close of Receivership, and General Balance Sheet of Lehigh and New York Railroad Company after Purchase of the Properties of the Southern Central Railroad from the Reorganization Committee, August 24th, 1895." Marked "Lehigh Valley Exhibit 38, June 30, 1909."

A document entitled, "Statements relating to Examination of the Books and Accounts of the Lehigh Valley Railroad Company and its Antecedents, showing Composition of Charges to Cost of Property and other Asset Accounts—to June 30th, 1908;" that being a compilation of statements relating to the Pennsylvania Corporation and its constituent companies. Marked "Lehigh Valley Exhibit 39, June 30, 1909."

A document entitled, "Statements, relating to Examination of the Books and Accounts of the Lehigh Valley Railroad Company of New Jersey and its Antecedents, showing Composition of Charges to Cost of Property and other Asset Accounts—to June 30th, 1908." Marked "Lehigh Valley Exhibit 40, June 30, 1909."

A document entitled, "Statements relating to Examination of the Books and Accounts of the Lehigh Valley Railway Company and its Antecedents, showing Composition of Charges to Cost of Property and other Asset Accounts—to June 30th, 1908;" that being a compilation of statements relating to the New York Corporation and constituent companies. Marked "Lehigh Valley Exhibit 41, June 30, 1909."

A document entitled, "Statements relating to Examination of the Books and Accounts of Sundry Companies—not merged, showing Composition of Charges to Cost of Property and other Asset Accounts—to June 30th, 1908." Marked "Lehigh Valley Exhibit 42, 6-30-09."

A document entitled, "Statement relating to Equipment Trusts." Marked "Lehigh Valley Exhibit 43, 6-30-09."

A document entitled, "Statement showing Changes in Valuation of Properties at Dates of Mergers of Constituent Companies." Marked "Lehigh Valley Exhibit 44, 6-30-09."

A document entitled, "Condensed Classification of the Invested Current Capital—November 30th, 1896. Consolidated General Balance Sheet—November 30th, 1896.

Combined Balance Sheet—November 30th, 1896." Marked "Lehigh Valley Exhibit 45, 6-30-09."

A document entitled, "Condensed Classification of the Invested and Current Capital—November 30th, 1900. Consolidated General Balance Sheet—November 30th, 1900. Combined Balance Sheet—November 30th, 1900." Marked "Lehigh Valley Exhibit 46, 6-30-09."

A document entitled, "Condensed Classification of the Invested and Current Capital—June 30th, 1904. Consolidated General Balance Sheet—June 30th, 1904. Combined Balance Sheet—June 30th, 1904." Marked "Lehigh Valley Exhibit 47, 6-30-09."

By MR. PLATT:

Q. Asking you with reference to all of these documents which have been offered in evidence this morning, are those documents that have been compiled by you? A. I compiled all of the balance sheets, the income accounts and statements, with the exception of certain sheets containing some computations, or averages based on those balance sheets and income accounts, contained in Exhibits 32, 33, 45, 46 and 47.

Q. You assisted in the compilation of those, did you not? A. Yes, sir.

Q. And checked them over? A. Yes, sir.

Q. Were these various documents all of them compiled by you from the books of the various corporations as shown on their face? A. Yes; and not only shown on their face, but as shown in the collateral records and supporting books.

Q. What I mean is this; as shown on the face of the Exhibits. You compiled them from the books of the corporations as they appear on the face of the Exhibits? A. Yes, sir.

Q. And you compiled them correctly? A. Yes, sir.

(Counsel for the Government state that, after having had a chance to examine these Exhibits, the Government reserves the right to recall this witness for cross-examination.)

THOMAS A. LANG, recalled:—

By MR. FIELD:

Q. Where do you reside? A. Kingston, New York.

Q. Your profession is what? A. Civil engineer.

Q. Are you engaged as a locating engineer? A. Yes, sir.

Q. How long have you been so engaged? A. About twenty-eight years.

Q. What, in brief, are the duties of a locating engineer? A. It is to make the survey for a line of railroad to be built, stake it out; get it ready for construction.

Q. What, if anything, have you had to do in the course of that profession as a locating engineer, with estimates of the cost of building railroads? A. As soon as a line is located, I have to make up an estimate of the cost of building it, just the same as to be used for letting the work to contractors. This estimate is used as a bid, really, to compare with the contractors' bids. I also have made valuations of railroads at various times.

Q. Going back to the construction of new roads, do you follow through the construction of the road and have you been familiar from time to time with the actual cost of constructing roads on which you have previously made your bids? A. Yes, sir.

Q. Have you done special work in valuing railroads already constructed? A. Yes, sir.

Q. For what purposes? A. For the purpose of one road getting trackage rights over another. The trackage rates are based on the valuation.

Q. Have you been conducting your profession along these same lines during this entire period of your occupation? A. Yes, sir.

Q. Where were you employed before your present employment? A. I was employed on the Chicago, St. Paul, Minneapolis and Omaha, which is the Chicago and Northwestern; on the Minneapolis, St. Paul and Sault Ste. Marie; on the Duluth and Iron Range; Wisconsin Central; Chicago, Milwaukee and St. Paul; Missouri, Kansas and Texas; Chicago and Eastern Illinois Railroad; and the New York Central.

Q. How long were you engaged on the New York Central? A. Seven years.

Q. Your present employment is what? A. I am employed with the Amsterdam Corporation, in charge of changing the Ulster and Delaware Railroad where the new Chacun dam overflows the present tracks.

Q. And the head of that corporation is Mr. William J. Wilgus, who has previously testified in this suit? A. Yes, sir.

Q. And you are familiar with the reproduction cost of railroads, are you not? A. Yes, sir.

Q. And have, during the course of your profession, made yourself familiar with such costs in all parts of the country? A. Yes, sir.

Q. Have you examined the Lehigh Valley Railroad between Perth Amboy and Coxton with a view of stating what, in your opinion, is the fair and reasonable reproduction value of that road? A. I have.

Q. Did you carry on this work in connection with Mr. Wilgus, who has already testified? A. I did.

Q. State, very briefly, what course you pursued in getting at the valuation of this road? A. First I went over the line on a pony engine, and went over the line again on the hind end of a passenger train. I made a valuation on that trip, and afterwards went over on a handcar and measured up all the bridges and the length of the steel girders, the height and length of the masonry, abutments, the size and length of the concrete culverts and the depths of the cuts and fills on the entire length; also the sizes of various buildings that I could get at conveniently, station buildings, buildings located immediately on the track.

Q. In this manner you made an exhaustive and minute measurement and analysis of the railroad plant as you found it, between Perth Amboy and Coxton? A. Yes, sir.

Q. And further in connection with the mining branches and spurs around Coxton and Wilkes-Barre? A. Yes, sir.

Q. I show you Lehigh Valley Exhibit No. 24, May 13th, 1909, prepared by Mr. William J. Wilgus and in evidence in this case, and will ask you to look at the sheet numbered L-1. Will you please state whether or not the amount given on sheet L-1 of Lehigh Valley Exhibit 24, $26,482,220, is, in your opinion, the reasonable value or estimate of the cost of reproduction of the Lehigh Valley Railroad from the west end of the Perth Amboy Yard to Coxton by way of the Mountain Cut-off? A. It is a very conservative valuation. It is about, in my judgment, $2,000,000 too low.

Q. Have you made an estimate of the same property? A. Yes.

Q. You arrive at a figure in excess of that $26,000,000? A. Yes.

Q. What figure did you arrive at? A. $27,925,423. That amount, however, did not include everything on the line. There are about five hundred thousand or six hundred thousand dollars that are not included in that $27,925,000 estimate.

Q. Your estimate, then, is a minimum valuation? A. Yes, sir.

Q. Now, looking at the next sheet, L-2, will you state whether or not $259,760 is a correct estimate of the cost to reproduce the Lehigh Valley Railroad at the Port Bowkley District, collecting from the collieries? A. No; that is a very low estimate.

Q. What, in your opinion, should that estimate be? A. $378,627.

Q. You have made an estimate of that same property, based upon the examination to which you have testified, and that is your estimate as to the reasonable reproduction value? A. Yes, sir.

Q. What does that include? A. That includes right of way, grading ——

Q. I mean what particular tracks or branches? A. The particular tracks?

Q. Yes, in a general way. A. By that, you mean the particular tracks on the ground?

Q. That includes the branches to the mines, does it not? A. No; this is the part of the main line from Coxton to Conway, over which the collecting is made from the collieries.

Q. It is part of the main track? A. It is part of the main track—no; I am mistaken about that being part of the main track.

Q. I was correct, then, and this first amount, $259,760 does represent the mine branches, does it not? A. It represents the mine branches.

Q. On the same page will you state whether or not, in your opinion, $4,274,805 is a reasonable reproduction value for the railroad constituting the assembling plant from Port Bowkley to Coxton Yard? A. That is a little low.

Q. Did you make an estimate of the same property? A. Yes, sir.

Q. What, in your opinion, is the true reproduction value? A. $4,351,550.

Q. This is the charge to which you have just referred —— A. As part of the main track.

Q. By misapprehension in referring to the first part of the page. It includes the main track between Port Bowkley and the Coxton Yard? A. Yes, sir.

Q. It does not include any of the Mountain Cut-off, however? A. No, sir.

Q. Looking at page L, No. 3, will you state whether or not $1,492,100 is the reasonable reproduction value of the collecting tracks, including branches and spurs subsidiary to the Coxton Yard, under the heading "Coxton Collecting from Collieries"? A. That is high; that is a high estimate.

Q. Have you made a similar estimate? A. I have.

Q. What, in your opinion, is the reasonable value of those branches and spurs? A. $1,270,829.

Q. And that is the figure which you arrive at corresponding to William J. Wilgus' figure of $1,492,100? A. Yes, sir.

Q. Going to the last one on page 3, will you state

whether or not $1,009,000 is a correct valuation for the Coxton Yard? A. That is a little low.

Q. Did you make a similar valuation? A. I did.

Q. What in your opinion is the true valuation? A. $1,021,720.

(The Government reserves the right, after examining the documents about which the witness has spoken, to recall him for cross-examination.)

E. B. THOMAS, having been duly sworn, was examined as follows:—

By MR. PLATT:

Q. Where do you reside? A. My legal residence is at Fountain Hill, Lehigh County, Pennsylvania.

Q. You are the president of the Lehigh Valley Railroad Company? A. I am.

Q. And of the Lehigh Valley Coal Company? A. Yes, sir.

Q. How long have you held those positions? A. Since December, 1902.

Q. Before that time did you have any connection with the Lehigh Valley Railroad Company? A. I was chairman of the Board of both the Lehigh Valley and the Erie for a few months prior to that time.

Q. Prior to that time what was your connection with the Erie Railroad Company? A. It was in various capacities. I went there in 1888 as Vice-President in charge of the lines west of Buffalo; subsequently came to New York in charge of all the lines; afterwards First Vice-President, afterwards Receiver, and finally as President.

Q. That is you came originally with the old New York, Lake Erie and Western Railroad? A. Yes, sir.

Q. When it went into the hands of a Receiver, you were the Receiver of the road? A. Not until John King and J. C. McCullough were appointed Receivers, and, on the resignation of Mr. King, I took his place. He was in ill health.

Q. What was the date when that road went into the hands of a Receiver? A. I cannot state that offhand. It

is a matter of record and I assumed it was here and would not be of importance.

Q. Can you state the year? A. No. I think we were reorganized in 1895, if I recollect right.

By JUDGE MOOT:

Q. The date when the new company started in was about the 14th of November, 1895? A. Yes; that is my recollection; so the receivership must have been prior to that.

By MR. PLATT:

Q. That is the present Erie Railroad? A. The present Erie Railroad.

Q. You remained President of that from its organization down to what date? A. 1901.

Q. What date in 1901? A. I do not recall the exact date; I think it was May.

Q. The petition or complaint in this case charges that in 1895, or about that time, the defendants, or some of them, "Entered into an agreement, scheme, combination, or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain, and monopolize, and have controlled, regulated, restrained, and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States and its price and sale throughout the several States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced." Is that charge true or false? A. It is not true.

Q. Did you ever have any knowledge of any such scheme as that which is charged? A. I never did.

Q. Has there ever been any such agreement, or scheme, or combination, or conspiracy between the defendants? A. Never has. I have never known the time when every party in the trade was not at liberty to produce and transport all the coal he desired to, or that he could sell. If he could not sell it, he could throw it in the North River, if he wanted to.

Q. Did that agreement, or any such agreement as that, or any agreement of that character, exist at the time

charged in the complaint or at the time of the commencement of this proceeding, June 12th, 1907? A. I never knew of any.

Q. Has the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company, within your knowledge, ever been a party to any such agreement? A. Not to my knowledge.

Q. Or any officer of either of those companies? A. No, sir.

Q. I call your attention to an exhibit which has been offered in evidence by the Government, No. 152, appearing on page 315 of the book of Complainant's Exhibits and entitled "A Plan for the Government of the Anthracite Coal Trade for the year 1876." A. That antedated my time. I do not know what they might have been at in 1876. I know they have never had anything since 1888.

Q. What do you know about that document, about the agreement that is referred to in it? A. I never heard of it until I saw it in this exhibit. I think it is one of those impracticable things that have often taken place in trade, where they endeavor to conduct it on business-like and conservative lines and have failed.

Q. As to that particular paper, you have looked that over since it was put in evidence in this case? A. Yes; I have read it.

Q. You know the contents of it? A. In a general way.

Q. Since you have had to do with the business of anthracite coal, either in connection with the Erie Railroad or in connection with the Lehigh Valley, have you ever known of any such agreement as that to be in existence? A. No, sir.

Q. Or to be in effect? I never have.

Q. And I understand you to say as to this that you never heard of it? A. I never heard of it until I heard of it in this case.

Q. Some reference was made, in the course of the complainant's testimony, when Mr. Harris was being examined as a witness on behalf of the complainant, to certain meet-

ings of railroad officials which took place in 1884 and down to 1886, or about that period, for allotting percentages of output. What do you know about those meetings? A. Absolutely nothing. It antedates my connection with the business, which commenced in 1888. I never heard of it as a matter of record until I heard of it in this case.

Q. Was there any such arrangement as was spoken of there in the questions which counsel asked Mr. Harris, and in Mr. Harris's testimony, in existence when you came into the business in 1888? A. There was not.

Q. Or at any time after that? A. Nor at any time after that.

Q. Some testimony has been offered by the complainant about a meeting, or some meetings, which were held in or about 1896, of the Presidents of the anthracite railroads, at which there was an understanding, or an attempt at an understanding, between them as to percentages of product of anthracite coal to be carried by different railroads during that year. Were you present at any such meeting at that time? A. Yes, I was present at a meeting where there was an attempt made to reach a tentative understanding as to the quantity of coal, proportion of coal, that each road would transport. It related entirely to transportation.

Q. For how long a period was that under discussion? I mean, what was to be the period —— A. The period was to be a year. There was not enough percentage in a hundred to go around, to begin with.

Q. What do you mean by that? A. I mean to divide it into per cents., we had to put one hundred and one per cents., as near as we could come.

Q. In other words, there was some party or parties that were there that would not consent to the percentage that was talked about; is that right? A. That is right.

Q. And never did consent? A. Never did consent to it. As far as I have any knowledge, I do not think anybody ever regarded it. It came about by reason of crowded terminals, the question of distribution of cars among shippers.

Q. I wish you would explain that more fully. A. The

individual operators claimed that, in times of scarcity of cars, we were favoring our own companies, or those controlled by the railroads, and that they were short of cars. There was an attempt to distribute the tonnage to be handled on colliery production. The individual shippers would load up the cars and send them to tidewater or to any other destination and allow them to accumulate and have no market for them. They crowded our terminals and then, when times came up that our own companies had not done the same, they claimed their same proportion of cars right along; and it was an endeavor to conduct the distribution of cars and movement of tonnage in a more orderly manner and in a more business like manner than it had previously been.

Q. And to meet these complaints? A. To meet these complaints.

Q. And to enable the railroad companies to meet these complaints? A. Precisely.

Q. Was any demand made at that time, or was any suggestion of any demand made, to curtail the output of coal? A. None whatever. I recollect George B. Roberts, who represented the Pennsylvania at that meeting, stating distinctly that he would not discuss any question of that kind or have anything to do with it; with which I heartily accorded.

Q. Was there at that time any charge made per diem for the holding of cars that were filled with coal for individual operators? A. No; nor for anybody else.

Q. Is there now? A. There is not now. I say there is not now; I think not. I am quite sure there is not.

Q. There is none in effect at the present time, is there? A. My recollection is there is not. I know there was none at that time.

Q. That, however, I think is immaterial, because what I want to get at is, what was the effect of that as to the holding up of the cars in dull times in periods when the markets for anthracite coal were dull? A. I think possibly for a little while the individual operators were a little

more conservative about loading up and sending to tide-water coal they had not sold.

Q. What I mean to ask you is, what was the result that grew out of dull times in the markets, which led to this conversation which you presidents had at that time? A. The result was this meeting to which I referred; but nothing practical came of that.

Q. Was there a result in operation which tied up the cars? A. That was the result in operation; that is what brought it about.

Q. Will you explain a little more fully how it resulted, as an operating matter, in tying up the cars? A. It blocked up the yards, blocked up the side tracks, made difficulty in switching and expensive methods of conducting the business.

Q. Was the Reading Railroad at that time in the hands of Receivers? A. They were.

Q. Mr. Harris was one of the Receivers? A. Mr. Harris and Mr. J. Lowber Welsh were Receivers.

Q. The percentages which were considered at that time were the percentages which have sometimes been referred to in this testimony as the "Presidents' Percentags?" A. I assume that they were.

Q. Did that understanding or talk ever go into effect as an agreement? A. Never.

Q. Was it ever put into operation? A. I think some people tried to live up to it a little while, until they found the other fellow was not.

Q. Was there ever any talk about continuing it after the first year? A. Never.

Q. By anybody? A. There never was any meeting held after the first one, and I do not think there were any practical results out of that.

Q. Has there at any time since, except as to this early attempt by some of them, been any observation by the companies of these percentages which were adopted at that time? A. Not to my knowledge.

Q. Has the Lehigh Valley Company ever observed them? A. It has not.

Q. On what basis were those percentages ascertained? A. They were supposed to be in proportion to the quantities of coal that each road had theretofore transported.

Q. Had been transporting prior to that time, within a reasonable period? A. Yes, sir.

Q. And practically representing mine capacity along those roads? A. Supposed to.

Q. Under ordinary conditions of production and consumption at that time, would those percentages vary very much from those that were adopted? A. They might vary as properties were acquired or disposed of by other interests. I do not think they materially varied.

Q. I call your attention at this point to Government Exhibit No. 14, in which it appears, on page 49 of the printed Exhibits, that the total shipments of anthracite coal for the calendar year 1903 for the several railroads were 59,362,831 tons, of which the Lehigh Valley shipments amounted to 9,737,160 tons. It appears also that the supposed allotment by the Presidents' Percentages, so-called, to the Lehigh Valley was fifteen and sixty-five one-hundredths per cent., and that percentage of the total shipments would have amounted to 9,290,283 tons; in other words, the shipments by the Lehigh Valley at that time were 447,132 tons more than they would have been according to the Presidents' Percentages for that year. At an average rate of, say, one dollar and fifty cents per ton, this would amount to something like $700,000 that the Lehigh Valley Railroad got in freights that year over and above what it would have received if it had been restricted by these Presidents' Percentages. Did you ever hear of any other railroad company complaining? A. I never heard any complaint and, if I had, I would have paid no more attention to it than I would to the direction of the wind. In 1903 there was an active demand for coal and the Lehigh Valley Coal Company could sell every pound of coal it produced, and it did so.

Q. There has been offered in evidence some Exhibits, prepared by Mr. Ruley, which show, for example, that the tonnage of the Lehigh Valley Railroad Company for

the period mentioned in that Exhibit was 1,393,663 tons less than it would have had if those percentage agreements had been observed, and which show that some years the Lehigh Valley's excess or deficiency ran into many hundreds of thousands of tons. Did you ever make any complaint, or hear of any complaint being made by any other of the supposed parties to this agreement growing out of that? A. I never did and I would not know who to complain to or what complaint I had to make. I know that during those periods, we mined and transported to market all the coal we could find a profitable market for.

Q. It appears, for example, that during the period covered by this Exhibit, the Delaware, Lackawanna and Western had a tonnage of 13,194,000 tons above its supposed percentage, and that the Pennsylvania Railroad Company had a deficiency of 10,721,000 below its supposed percentage. Did you ever hear any comment made on that? A. I never did.

Q. As being in violation of any agreement? A. There was no agreement, and no complaint could be made where none existed. That was the result of commercial conditions. The Lackawanna produced what is known as free-burning coal, which is in demand at times and in certain markets in excess of that produced in the Lower or Middle Regions. It is easier to market. We are to-day running our collieries in the Wyoming Region full time where in the Lower Region we cannot find a market to keep our collieries running half time.

Q. Is that the result of a difference in the quality of coal? A. It is. The Wyoming coal and Lackawanna are free-burning coals, easily ignited, and are more desired by cooks and those using cook stoves or such things as that, and you can sell that much more readily, especially in the East.

Q. Has there ever been any attempt, as is charged in the complaint, in any way to control the production of anthracite coal? A. I have never known of a period, since my connection with the business, when any attempt

has been made to regulate the quantity of coal that should go to market, or when, on the properties that I was in charge of, I was not free to mine, transport and sell all the coal that I could on profitable terms to the properties of which I was in charge.

Q. Has everything been done on the Lehigh since you have been with it to stimulate the production and shipment of coal? A. It has.

Q. There never has been any attempt to curtail production in any quarter, either by the Lehigh Valley Coal Company, or by the Lehigh Valley Railroad Company, nor by any of the independent miners? A. The Lehigh Valley Coal Company has only undertaken to restrict its production when it could not find profitable markets for it, or when it had as much in stock as it could afford financially to take care of.

Q. Has there ever been any attempt by the Lehigh Valley Railroad Company, or any of its officers or by the Lehigh Valley Coal Company or any of its officers to restrict production by independent miners? A. None whatever. Under the sixty-five per cent. contracts, the individual operators were only to run their mines as we ran ours, and we would run ours whenever there were markets for them. That is the only shadow, if that can be called a restriction on an individual operator.

Q. It appears already in evidence by the Government that the Lehigh Valley Coal Company, whose stock is owned by the Lehigh Valley Railroad Company, is the owner of large amounts of coal lands from which coal is produced, adjacent to and tributary to the Lehigh Valley Railroad Company. Can you state generally how it came about that the Lehigh Valley Coal Company acquired these lands? Was it in combination or by arrangement with another railroad company, or was it in competition with the other railroads? A. As I read the history of the Lehigh Valley Railroad, and as I know it on the other roads, their sole object in acquiring coal lands was to protect the tonnage and to secure tonnage to their own lines.

Q. And to prevent it from going to other railroads? A. And to prevent it from going to their competitors. The competition between these anthracite roads has at times been very severe for tonnage; that is, for the acquirement of tonnage and for the acquirement of coal lands which would secure to their lines the business, and as much tonnage as they could control.

Q. The carriage of anthracite coal is the principal business of the Lehigh Valley Railroad, is it not? A. It is about fifty per cent. of its volume of business; from forty to fifty per cent. It has been as low as forty and been over fifty. It is about fifty per cent. to-day.

Q. You refer now to coal carried? A. I refer now to coal transported.

Q. Is it not true also that a great deal of the remaining half of the company's business is incidental to and due to the coal business along the line, dependent upon it? A. The Lehigh Valley is a trunk line and carries a considerable portion of the east and westbound traffic between the Hudson River and the Lakes; but the bulk of its business is the anthracite coal. It has no bituminous coal of any particular amount and, outside of its anthracite coal, its traffic is made up of such things as pig iron, ore, and such matters in the Lehigh Valley, and grain from the Lakes, and general traffic. A great deal of that, of course, is consumed in the anthracite coal region.

Q. Leaving out the other traffic, in grain and packing products, is it not true that a large part of the other traffic, local traffic on that line and passenger traffic, except anthracite coal, is due to and dependent upon the anthracite traffic along the line? A. If anthracite coal was not there, was not mined and transported, it would be a howling wilderness along the line of the Lehigh Valley Railroad.

Q. Take, for instance, the purchase of the Coxe Brothers property in 1905 by the Lehigh Valley Company, which has been in evidence in this case. Was that due to any arrangement that was made with any other rail-

road, or was it due to competition between the railroads for coal properties for the maintenance of their tonnage? A. It was due to my efforts to secure, and to retain, to the Lehigh Valley Railroad the tonnage which belonged to it. Originally that tonnage was carried by the Reading Railroad. It was taken away by the Lehigh Valley, by the building of the connection.

Q. That was about 1892? A. I do not recollect. It was prior to my connection with the road. It was transported by them for a great many years. Then there was a proceeding before the Interstate Commerce Commission, brought by Coxe Brothers, for the purpose of reducing the rates, on which the Commission made a ruling in which they lowered the rates, with which the courts did not agree. Mr. Alexander Coxe was a member of the Board of the Lehigh Valley Railroad. He came to me some months prior to the purchase and said that he thought of getting out of the business; that he had had unexpectedly a large offer for that property but that, in view of his connection with the road and his association with its owners, he would prefer to have them acquire it. He declined to name the men who had made him the offer. Subsequent interviews between us convinced me it was a *bona fide* offer. Mr. Coxe was a gentleman, a man of wealth and reputation and I had confidence in what he said. He made me the first offer. I went to our bankers and I asked them if I could have a certain amount of money without disclosing the purpose. They told me I could. The result was that I negotiated the transaction, notified our people of what I had done and asked authority to go on and close the transaction, which I did. So far from disclosing it to anybody outside of our own finance committee, I took every pains to keep it quiet, for fear I would lose it.

Q. And lose the tonnage? A. And lose the tonnage. The Pennsylvania Road was carrying then the greater part of that tonnage West. They made a demand for part of it, thought they ought to have it. They thought it was not a fair deal for us to go in and buy the proper-

ties they were carrying the coal of. I said that tonnage was on our line and I proposed to have it, and I maintained that position. I would have preferred not to have bought that property. I would have preferred to let Mr. Coxe remain there and run it; but I was not going to expose myself to the possibility of losing a large tonnage.

Q. Take another illustration, the case of the purchase of the Pennsylvania Coal Company by the Erie Railroad. Was that to preserve the tonnage of the Pennsylvania Coal Company to the Erie? A. The purchase of the Pennsylvania Coal Company was made on my initiative. That company had done business in connection with the Erie Road—this was during my administration of the Erie Road—for over forty years. It leased to the Erie Road a branch line between Hawley and Lackawaxen, which the Erie used to transport the coal first when it was brought to Hawley by plane and afterwards, when the Pennsylvania Coal Company built the Erie and Wyoming Valley to that point, to connect with them and distribute their tonnage. The Pennsylvania Coal Company always wanted a larger division of the rate than I was willing to allow them. Like all sellers, they did not think they got enough. I thought they got too much. I knew it was a valuable piece of property. I knew the loss of that property to the Erie Railroad meant ruin.

Q. You mean the loss of the tonnage? A. The loss of the tonnage. They bought the roadbed of the old Delaware and Hudson Canal, which had been abandoned. They had formed a new company, proposing to extend their Erie and Wyoming Road, in which the Erie owned forty-nine per cent., to the Hudson River. I opposed the building of that road by all the means I could command before the Railroad Commissioners, but they got their certificate. I followed it to the courts and was defeated. I did not expect to prevent the building of another road. I cared nothing about whether they built one road or a hundred, if I had the tonnage. I wanted time for negotiation and, after a very long time, nearly two years, I succeeded in inducing J. P. Morgan & Co.,

the voting trustee, to purchase that property for the account of the Erie Railroad. They did so, and that is the one thing that made the Erie property a solvent property, and it is their salvation to-day. Without it they would have been in bad shape, and I look back at no act in my fifteen years' experience on that road with which I am better satisfied and in which I feel that I did better work for them, than in that purchase. It has been a remunerative commercial enterprise. I took especial pains to disclose to no other man in the anthracite region what I was doing, nor in the anthracite business, for fear that they would want to get in on that; but one gentleman in the trade, finding that I had it practically in my hands, came and demanded an interest in it and I denied it to him, either interest in the purchase or the tonnage. I was working to protect and to hold to the road the tonnage that they had always enjoyed. So far from there being any combination in that, there never was the slightest thought of it.

Q. Let me just ask you this at this point It is charged in the complaint that, "as a step in the development of the alleged illegal combinations between these defendants and in furtherance of the purposes of that combination, the defendants or some of them engaged in and became parties to the following acts;" one of those acts that is referred to is this purchase of the Pennsylvania Coal Company stock by or on behalf of the Erie Company. What truth is there in that allegation? A. There is absolutely nothing whatever. So far as I could, I kept the knowledge of that from everybody for fear I would lose it to the Erie Road.

Q. Let me ask you whether the Lehigh Valley Railroad Company or any of its officers, had anything to do with that? A. They had nothing to do with it, and I doubt if it is possible they could have had any knowledge of it. I did all I could to keep it from everybody. There was no combination, there was no consolidation, there was no agreement; it was as clean, straightforward a

transaction as ever took place in the transportation business of this or any other country, and out of which I made not one single penny.

Q. Mr. Alfred Walter was President of the Lehigh Valley Railroad Company at that time? A. Yes.

Q. Did you say anything to him about it? A. You bet I didn't.

Q. Or to any other officer of the Lehigh Valley Company? A. Or any other railroad whatever. I think if they had asked me about it, I should have denied it as near as I could without absolutely lying to them.

Q. It appears in the testimony here that the Lehigh Company has acquired, during the past years since its organization in the 50's, this coal property; or, rather, that the Lehigh Valley Coal Company has acquired it and other coal companies in which the Lehigh Valley Railroad Company has been interested. It appears particularly that, during recent years, since you became the President of the Lehigh Valley, that coal properties have been acquired in the Wyoming Region particularly and properties in the Lehigh Region. Have those all been acquired for the same purpose, that is, for protecting the tonnage and keeping it from going away to other roads? A. Making assurance doubly sure that the tonnage stayed on the Lehigh Valley, where it belongs.

Q. The Lehigh Valley Coal Company is also the lessor, it appears here, to various producers of coal along the Lehigh Valley Railroad. What has been the policy of the Lehigh Valley Railroad in that respect, in the way of developing its property and of producing tonnage? A. Originally the Lehigh Valley started off with the idea that the Lehigh Valley Coal Company would not develop properties. This, as I read the history; it is not my actual knowledge. It is as I read it from the reports.

MR. MCREYNOLDS:—We object to it unless you testify from your own knowledge.

THE WITNESS:—I cannot testify of my own knowledge.

By MR. PLATT:

Q. These matters you are going to refer to are matters

of general, common knowledge in the business, which it is your business to know? A. They are; but they are not of my actual knowledge. I was not there in 1850, thank Heaven; I have had trouble enough since.

Q. But you do know of them as matters in the business of the company, which it is your business to know? A. Yes, sir.

Q. Please go on and state what you were going to state about the history? A. The Lehigh Valley acquired lands in the name of its coal companies, or rather the Lehigh Valley Coal Company acquired them, for the purpose of protecting and developing to that road its tonnage. It leased a great many of those to individual operators. A great many of the individual operators in early days failed by reason of want of capacity, by reason of low prices of coal, and for various commercial reasons and unsuccessful merchandizing. Much of that mining was unskilfully done, and they left the properties in bad shape. They were taken over at different times, some of those for those reasons. They were taken over because the Lehigh Valley road wanted a larger tonnage from them and those parties had not sufficient capital to properly develop them. Mining in the early days, when they went in and gouged out the profitable part and left the unprofitable part, was not a satisfactory method to the Lehigh Valley, which was endeavoring to preserve to itself its tonnage for a long period of time to come. It is not a new industry. It is an old one, and has been through more vicissitudes, more times of disappointment, and more money has been lost, than the public have any idea of.

Q. What was the reason that the Lehigh Valley Coal Company made these leases, instead of going ahead and doing the mining itself, or keeping it until it could be mined? A. I do not think in those days they cared to go into the mining business, did not care to invest the capital, possibly might not have had the money. I am speaking now, understand, of matters not of my own personal knowledge.

Q. There are quite a good many of those leases now that are producing, are there not? A. Yes, there are several.

Q. In these leases is there a provision in each of them requiring a minimum production? A. Minimum production, or, failing to produce that, to pay the amount which that tonnage would have produced.

Q. In other words, there is a penalty on the lessee, practically, unless he does produce the minimum amount? A. There is, yes. One of the Temple Companies had, I think, somewhere between seventy thousand and a hundred thousand dollars which they had advanced on royalties on properties that they leased from the Lehigh Valley Coal Company; originally leased to individuals and then transferred to the Temple Iron Company.

Q. I do not mean to refer to these minimum royalties as a penalty technically, but it amounts to a penalization of them if they do not produce? A. The ordinary methods pursued in leases is that a party contracts to mine and pay at a specific rate per ton for a specific amount of coal, say one hundred thousand tons. If he produces, say, fifty thousand tons, he pays on the one hundred thousand tons; but he is allowed to recoup himself out of future mining in excess of one hundred thousand, the minimum.

Q. The idea being to —— A. The idea being to produce a volume of business which would give transportation.

Q. Is there any restriction in any of these leases as to the amount that each individual operator shall produce? A. None whatever.

Q. The charge is made in the bill of complaint that, as one of the steps in furtherance of this alleged combination, the defendants, or some of them, entered into the transaction which is referred to as the Temple Iron transaction. I think it is not necessary to specify it any more carefully. It is the transaction referred to in paragraph VII, subdivision D, of the complaint. Is it true that the transactions which were entered into and which have been proved in this case in connection with the Temple Iron Company, were in pursuance of any combination of the kind alleged in the complaint? A. To restrict production?

Q. Yes. A. Not at all.

Q. Or to control production, or rates, or prices? A. The

Temple Iron Company had no more to do with the rates on coal than the proprietor of this tavern. Simpson and Watkins, who were shippers on the line of the Erie and Lehigh Valley roads, as well as the Ontario and Western ——

Q. The Lackawanna also? A. Yes, they were shippers on the Lackawanna. They were, as usual, dissatisfied with the rates, thought they should have lower ones. We declined to lower the rates; they were reasonable. They got a lot of tonnage together, their own and that of other shippers, and threatened to build another road to the Delaware River opposite Easton.

Q. That is the Erie and Wyoming Valley? A. I do not recall the name. I assume that is it. I think it was the New York and Wyoming.

By MR. TODD:

Q. New York, Wyoming and Western? A. Yes; and they bought a lot of rail and so on. A great many people thought they would not build that road. I was not so sure what a lot of speculators back of that tonnage would do. I did not care whether they built a road or not, but I did care if the tonnage which the Erie Railroad was then carrying was taken away from us. This, you must bear in mind, was prior to the purchase of the Pennsylvania Coal Company, and not subsequent to it. They came to me and talked it over, and they talked it over with financial people in New York.

Q. You mean Simpson and Watkins? A. I had no particular conversation with Simpson & Watkins, but they talked to financial people here and the matter was brought to my attention. I did not care how many railroads they built, if I could hold that tonnage to the Erie Railroad. They made a proposition to people here in New York to sell it. I was very anxious that we should buy it and preserve the tonnage that we were carrying and at the same time preserve the tonnage to other and friendly lines. I believed it was a good commercial transaction. If the Erie Railroad had had the money or credit to have purchased that alone I would not have wanted

any partners in it. I would have taken the whole of it. I would have taken over the Lehigh Valley's if I could have obtained the tonnage she is now carrying under it. I was not on her payroll then. It was in pursuance of those ideas that the properties were purchased. It is only fair to say, in further explanation of that, that the purchase of those properties has been a profitable one. We did not expect a six months' strike immediately following the purchase. We did not expect the strike of 1900, when the collieries lost money and we were forced to make it good. It has been commercially successful and has repaid every dollar of our advances.

Q. You understood at that time that the Simpson & Watkins properties and those that were associated with them were seeking a market? A. I did.

Q. And that the tonnage that was then tributary to the Erie Railroad might get away from it to some other railroad? A. There was every prospect that it would.

Q. To either an existing railroad or some new railroad? A. Yes.

Q. And it was the possibility of the loss of that tonnage that induced you to go in, as an officer of the Erie Railroad, to the Temple Iron Company transaction? A. It was.

Q. And to protect the Erie Company? A. Yes, sir.

Q. As to the Lehigh Valley, what were the motives that caused the Lehigh Valley to go into it? A. I do not know what their motives were, but I assume they were the same as mine. Part of the mines were on their lines and I assume that they wanted to retain the tonnage they had. Somebody would have bought those properties, and it was better to buy them jointly and allow the tonnage to go to the roads that had formerly carried it, than otherwise.

Q. Was the result of that operation to continue the tonnage of the collieries on the roads, where that tonnage had been before? A. That was its practical result, and it has never been disturbed.

Q. Is there not one minor exception as to a part of the

tonnage of one of the mines? A. Simpson & Watkins, prior to the purchase of those properties, had made a contract to allow the Ontario and Western a certain amount of tonnage from the Northwest colliery. They claimed that contract was *ultra vires*, and need not be regarded when they leased the properties to us. We stopped allowing the Ontario and Western to take that tonnage, and the Erie took it all. Mr. Fowler brought an injunction against us and, in connection with Mr. Baer, I looked into the matter and we came to the conclusion that, whether it was a legal contract or not, it was an unfair thing to take away that tonnage, it was a violation of a contract, whether legal or otherwise, and it was settled by allowing that tonnage to go, as it has ever since, to the Ontario and Western.

Q. It has been claimed that the Temple Iron Company was organized for a different purpose than that which you have stated; that it was organized for the purpose of controlling production, controlling rates, and controlling sales and prices, and that the officers and directors of that company got together and used that organization for purposes of that kind. How much truth is there in it? A. There is no truth in it. The Temple Iron Company made afterwards the sixty-five per cent. contract with the various coal companies controlled by the lines over which the tonnage had formerly gone, and it has followed those lines since then.

Q. You say the Temple Iron Company made those contracts. As I understand it, the Temple Iron Company is not an operating company itself, but it holds the stock of some eight operating companies? A. Yes.

Q. And those sixty-five per cent. contracts you refer to were made between these eight companies and the several railroads on which they were? A. Yes.

Q. I am corrected by Judge Moot. He says those contracts were made with the Temple Iron Company. A. I will not be sure as to the machinery. It is a matter of detail I never went into. The Temple Iron Company, as I recall it, however, bought out these various companies.

I think it bought all the stock, although I am not certain, except as to the Lackawanna Coal Company, which was a limited partnership and in which they got, I think, four-fifths.

Q. But these sixty-five per cent. contracts were made with the various coal companies? A. Subsequently. I am not sure but what there were sixty per cent. contracts made first and then, when they went to sixty-five, they were made sixty-five. I am not sure. I cannot testify to that without going back.

Q. Is it not a fact that the sixty per cent. contracts were in existence at the time the purchases were made? A. Yes, and I think the original contracts were made at sixty per cent., but I would not be certain about that.

Q. Is it not the fact that the sixty per cent. contracts were in existence prior to the purchase and came over with the purchase and that, after the purchase was made, shortly afterwards, in 1901, the sixty-five per cent. contracts were made? A. They may have had sixty per cent. contracts, but, if they did, they were short-time contracts.

(Question read, as follows: "Is it not the fact that the sixty per cent. contracts were in existence prior to the purchase and they came over with the purchase and that, after the purchase was made, shortly afterwards, in 1901, the sixty-five per cent. contracts were made?") A. Not in 1901.

Q. 1902? A. The sixty-five per cent. contracts were not made until 1902, after the advance in pay that we were forced to make in 1900. The sixty-five per cent. contracts were made just prior to the big strike. That is all a matter of history; I do not want to testify to exact dates. I would not like to give any dates on that; I could not trust my memory on that.

By JUDGE MOOT:

Q. There is no dispute about it, if I may refresh your recollection. It appears by the Government's testimony that the negotiations for the sixty-five per cent. contracts commenced immediately after the settlement of the strike

of 1900, and that they continued for some months, and the making of the sixty-five per cent. contracts commenced and they were made at various dates, with various people, from early in 1901, dating back to November of 1900 in some cases, and, in other cases, being made as late as 1904, and apparently not dating back at all. A. I would not like to testify as to the particular dates, for the reason that it is a matter of record and can be easily ascertained.

By MR. PLATT:

Q. When Mr. Law, secretary of the Temple Iron Company, was on the stand, there was produced from the minute book of the Temple Iron Company a resolution appearing on those minutes, dated July 2d, 1901, apparently passed at a meeting at which you were recorded as being present, as follows: "Resolved, that Mr. Cumming, Mr. Sayre, Mr. Henderson, Mr. Caldwell and Mr. Warren be appointed a committee to consider the advisability and expediency of making a forty per cent. rate to outside shippers, or a flat rate, and. if so, what rate." Were you present at that meeting? A. The records say that I was. I cannot dispute the record. I have tried in every possible way to recall any meeting of that character, or any such resolution, or to explain to myself what it means. The Temple Iron Company has no more to do and had no more to do with the question of transportation than this hotelkeeper has, and why any such resolution should appear in their minutes when it is impossible, to my mind, that it could have been part of their proceedings, I cannot explain. I wish I could, because I am certain that, if I could, it would be a bitter disappointment to those who assume that it means something that I am equally sure it does not mean.

Q. Do you remember any time, either the time mentioned then or any other time, when the Temple Iron Company took up that business, or any such business as that referrred to in that resolution? A. None whatever. The Temple Iron Company had nothing to do with transportation. It sold its coal on the cars under the contracts which it had and which are on record.

Q. And has always done so? A. And has always done so, and, if my judgment is followed, it will continue to do so.

Q. Did you ever know of this committee meeting? A. I never knew of a meeting, or report, or anything else. I understand it is referred to in subsequent proceedings, that is, that the minutes of the meeting to which you refer were approved. I wish to Heaven I could recall it. I would like to testify to that.

Q. Another resolution was brought before us, dated June 30th, 1901, which appears on printed page 347 of the Goverment's testimony, in which it appeared that a letter was received from Mr. J. B. Dickson, requesting the consideration of certain conditions affecting the sale of coal at Boston and vicinity. Do you remember anything about that? A. I do not. I cannot explain that any more than the other. If you want an impression of what that means, I will give it to you. That is all I can do. The coal from the Northwest breaker, in some of the veins, in some of the rooms, was of an inferior quality and it is possible that they, the selling agents of the Ontario and Western, were appealing for some reduction in the price, which they were paying under the contracts. That is the only way I can account for it.

Q. It appears, as a part of the report from the Temple Iron Company's books, that the consensus of opinion was that it was not within the province of the Temple Iron Company to act on questions of such character; do you remember that? A. I do not remember that, but that would have been an entirely proper thing.

Q. It appears also on the minutes of the Temple Iron Company, under date of September 17th, 1901, on page 348 of the Government's printed record, that a communication was received from Messrs. Dickson and Eddy relative to the five cent differential, presented by Mr. Fowler; and it was moved and seconded that the communication relative to the five cent differential be referred to the sales agents to investigate and report.

Have you any recollection of that? A. I have not, except as I have explained my impression in regard to it.

Q. Was that the same matter referred to in the previous resolution? A. To my mind, it was the same matter referred to in the previous resolution. That is my impression. That happened in what year?

Q. That happened in September, 1901. A. That is a good while ago.

Q. The first resolution relating to the letter from Mr. Dickson was dated July 30th, 1901, and the second resolution, referring to the communication from Messrs. Dickson and Eddy was dated September 17th, 1901; you assume that those relate to the same transaction? A. I assume that those relate to the same transaction, but that is merely an impression. I have no recollection on the subject.

Q. Under the date of October 8th, 1901, there appears also in the Temple Iron Company minutes, noted on page 348 of the Government's printed record, that the president presented a letter from W. W. Ruley, asking for extra compensation, and stating that, owing to the increase in services required of him, the present allotment was inadequate, and this was referred to Mr. Baer with power to act. Do you remember about that? A. I do not. Ruley kept the statistics a great many years of the production and distribution of anthracite coal. I have no recollection of what may have taken place in that respect. I presume very likely he wanted more money. That is generally what they all want of a corporation.

Q. You have been one of the directors of the Temple Iron Company since it was taken over under the transactions referred to in the Government case, have you not? A. I have.

Q. During that time has the Temple Iron Company been engaged in any other business than that of producer of iron and coal? A. None whatever.

Q. And it has been a producer of coal under these sixty-five per cent. contracts? A. And producer of iron, quite largely of the latter.

Q. But, as far as its coal has been produced, it has all been produced under the sixty-five per cents.? A. Invariably.

Q. And its per cent. has been limited to that? A. Entirely.

Q. Have you ever known of any time when it has undertaken in any of the meetings, or when any of its officers have undertaken, in any way to regulate the quantity of business, or transportation, or rates for transportation, or selling of coal? A. In no way, shape, or manner has the Temple Iron Company ever interfered or given even advice in respect of transportation, production, or anything connected with the anthracite coal business, except as relating to that specific company and as a commercial transaction.

Q. The complaint alleges that, as one of the steps in the development of the alleged illegal combination and in furtherance of the alleged illegal purposes, defendants, or some of them, engaged in another transaction, namely, the acquirement of Susquehanna and Western stock by the Erie Railroad Company, referred to in sub-division B of paragraph 7 of the complaint. What did the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company have to do with that? A. No more than you did.

Q. Did it have anything to do with it? A. They ought to come in chronological order, those transactions.

Q. I do not care to go into detail. I merely want to go into the fact as to whether the Lehigh Valley Railroad Company or Coal Company had anything to do with that transaction or knew anything about it. A. I do not think there was any other anthracite carrier, or but three men living that knew of that transaction until it was completed.

Q. You mean any other anthracite carrier than the Erie Railroad Company? A. The Erie Railroad Company. That was Mr. Coster, of J. P. Morgan & Co., John Moore, of Moore & Schley, who bought the stock, and myself. It was done in pursuance of no agreement, combination, or arrangement with any party whatever, ex-

cept those three people acting in the interest of the Erie Railroad.

Q. Assuming that the Lehigh Valley people knew nothing about it, was it done in pursuance of any arrangement, or contract, or scheme, or plan to which the Lehigh Valley Company or any of its officers or any of its subsidiary companies had been a party or with which they had had anything to do? A. In no way, shape, nor manner.

Q. It is also alleged in the complaint that, in furtherance of this supposed combination, another transaction took place, namely, the purchase by or on behalf of the Reading of stock in the Jersey Central. What did the Lehigh Valley Company have to do with that? A. Nothing whatever. I was President of the Lehigh Valley at the time that purchase was made. I was in J. P. Morgan's office just after it was closed, and he said, "I have bought the Jersey Central for the Reading. What do you think of it?" I said, "I think that's a good thing for the Reading."

Q. That is the first you knew of it? A. That was the first I knew of it or heard of it.

Q. Did Mr. Morgan tell you it had been done in pursuance of anything that the Lehigh Valley had anything to do with? A. He did not.

Q. Now, as to the sixty-five per cent. contracts, it is alleged that they were made in pursuance of this alleged combination and in furtherance of this alleged scheme. Is that true? A. It is not. There was no scheme or arrangement that ever I heard of of that kind. Originally contracts for the transportation of anthracite coal were made as low as forty per cent. of the selling price at tidewater, by first one road then another; I think the Lackawanna must have probably been the first one that made that. That is my impression. They were followed up until the operators had gradually crowded them up to sixty per cent. of the selling price at tidewater as their proportion. Mr. Mitchell, in pursuance of his schemes for getting more for his laboring men, came down to that country in 1900 and called a strike.

Q. First put on the record who Mitchell is. A. He was President of the United Mine Workers. Unfortunately, just at that time there was a Presidential election on. We declined to advance the price of labor. The anthracite business has the same attraction for a politician that a candle has for a moth. I do not know why, but it has. We were pressed from every side. Mr. Hanna came to Mr. Morgan and begged him to use his influence to have us accede to their demands, that the election of a Republican President was threatened by our standing out and fighting the labor unions. From every side pressure was brought to bear upon us and we were forced to make a ten per cent. advance, and it was the interjection of the politicians into a business which they neither understood nor could conduct, which forced the settlement of that strike and the unnecessary and ill-advised advance.

Q. That resulted in a ten per cent. advance in the cost of labor? A. It did, and upon that the individual operators demanded an increase in their percentage. Various meetings were held between the coal companies purchasing their coal and themselves, in which it was finally agreed that these sixty-five per cent. contracts should be made, and made for the life of their property.

Q. And with provisions as to inspection? A. The contracts are in evidence. They were not all made, unfortunately, for the life of the mines. The Pennsylvania Railroad only made theirs for five years. Coxe Brothers only made some for seven years. We have one expiring tomorrow that was only made for seven years; and the chairman of that Operators' Committee, who was bound in every manner and by good faith to make a contract, has never made one to this day. There are many people outside. There has never been any effort to force people to make a sixty-five per cent. contract. If I were an individual operator, I would make one, because I think I could make more money. Others stay outside and market their own coal and are treated precisely the same as those who have made the contracts. It was simply a commercial transaction.

Q. At those meetings, and as the result of those meetings, did you do anything more than agree upon a uniform form of contract which the parties could make as between themselves, if they wished to make it? A. There was nothing done except as appears in the sixty-five per cent. contracts themselves.

Q. I understand; but was any operator bound in any particular instance with reference to any particular colliery, by those meetings, to make the contract, after the contract was adopted, or did you merely agree upon a form which you afterwards entered into with such of the operators as saw fit? A. The meetings held in respect to that were simply as to the form of the contract.

Q. Then subsequently those operators who wished to enter into contracts of that character with the coal companies, did so? A. They did.

Q. And those who did not wish to do so did not do so; is that the fact? A. That is precisely the case.

Q. And is it a fact that the chairman of the Committee of Operators who conducted those negotiations refused to enter into the contract? A. That is a fact.

Q. Who is that? A. That was Mr. Kemmerer.

Q. And he operates at the present time —— A. He operates at the present time without any contract and sells his own coal and does what he pleases with it. There are seventy-two collieries served by the Lehigh Valley Railroad, of which twenty-eight are operated by the Lehigh Valley Coal Company. There are eleven operated by individual operators under sixty-five per cent. contracts; there are thirty-three operated by other individual operators, making a total of seventy-two.

Q. Kindly state what individual operators on the line of the Lehigh Valley Railroad mine from lands of the Lehigh Valley Coal Company? A. The Austin Coal Company; Kingston Coal Company; Lentz; the Mill Creek Coal Company; the Stevens Coal Company; and the Forty Fort Coal Company, are all operators on the line of the Lehigh Valley or have leases from the Lehigh Valley Coal Company.

The Forty Fort Coal Company was leased to Simpson & Watkins and in that deal went to the Temple Iron Company. The Midvalley Coal Company is another operator on the line of the Lehigh Valley Railroad, who operate on the lands of the New York and Middle Coal Field Railroad and Coal Company, the control of the majority of the stock of which is held by the Lehigh Valley Railroad and is simply a company for leasing to operators.

Q. Which of these that you have mentioned are under sixty-five per cent. contracts? A. Four; Austin, Lentz, Forty Fort and Midvalley.

Q. Taking those you referred to a while ago as being originally on leases and which have been acquired by the Lehigh Valley Coal Company, state in regard to those in detail. A. There were five of those: Connell Coal Company; Seneca Coal Company; Righter Coal Company; Mineral Spring Coal Company, and a part of the Coxe Brothers, on what they call the Beaver Meadow lands.

Q. The Government has introduced in evidence the agreement between G. B. Markle and the Lehigh Valley Railroad Company dated December 30th, 1889, as Exhibit 151, which appears at page 312 of the Government's printed exhibits. You are familiar with that contract, are you not? A. I know the contract.

Q. That contract has been in force ever since it was made up to the present time? A. It is in force at the present time. As far as I know, there has never been any interruption to it.

Q. Are settlements between the parties under that contract made exactly in accordance with the terms of that contract? A. They are, absolutely.

Q. Is there a secret reservation or other settlement of any character made between the parties other than that which appears on the face of the contract? A. Absolutely nothing. The Lehigh Valley Coal Company is a factor and sells G. B. Markle's coal on a stated commission under that contract, and there are no reclamation agreements in regard to the transportation or the sale of coal, or settlements, other than as they appear in that written document.

Q. It is being carried out exactly as it was made and has been all the time you have been President of the company? A. Absolutely. There is nothing mysterious about that contract.

Q. You referred in the early stage of your testimony to the decision of the Interstate Commerce Commission in 1891, in the proceeding that was brought by Coxe Brothers & Co. against the Lehigh Valley Railroad Company to establish rates on coal from the anthracite regions to Perth Amboy. I ask you to refer to that decision and state what were the rates that were decided upon by the Commission at that time. A. The only knowledge I have is what is embraced in this decision. This antedated my connection with the road.

Q. I am handing you the decision; you can read it. A. "which we have determined upon, as reasonable, per ton of 2240 pounds, from the collieries of complainants to Perth Amboy is, on the prepared and larger sizes $1.50; on pea, $1.25; on buckwheat and culm, $1.05."

Q. At the time of that decision the rates were somewhat higher than those, were they not? A. I have so understood.

Q. As a matter of record, they were. Some time after that decision, the rates were established which are substantially like the rates found at that time, namely, as appears on the record, on prepared sizes to Perth Amboy one dollar and fifty-five cents; on Pea one dollar and forty cents; on Buckwheat No. 1 one dollar and twenty cents, and on the smaller sizes one dollar and ten cents. Those rates have continued, have they not, for a number of years? A. As my understanding of the transaction is, the Lehigh Valley went into court and resisted that order of the Commission and were successful in that, and the higher rates obtained; but gradually the rates have been, for commercial reasons, competitive conditions, worked down until to-day they are as stated.

Q. Is it not true that there has been, meanwhile, a very great increase in the cost of production and transportation of coal? A. There has.

Q. Could you give an approximate estimate of the increase of cost of carrying the coal since that finding? A. It would be only a guess, and absolutely of no value.

Q. Can you state a minimum? A. I have been trying to find out for forty years what it costs to haul a ton of freight a mile, and have failed. There has been an increase in the cost, especially in the last few years, in labor and material, in every business avocation.

Q. Is that percentage on labor as high as twenty-five per cent. anyway? A. I should say that, on much railroad labor, the advance has been even higher than that.

Q. How as to material and supplies? A. The rail is considerably higher. We have bought rail as low as sixteen dollars and the least we have been able to buy it for the last few years is twenty-eight dollars. That is a very large percentage.

Q. When you say that the cost of labor has increased as much as you have said, does that apply to labor for construction and maintenance, as well as labor for operation? A. Oh, yes.

Q. Has equipment increased in cost? A. We are paying $1000 for coal cars now that we used to buy for $250; to be sure, the latter only carried twenty tons and the present carry fifty.

Q. Taking the cost of equipment to quantity of coal, has the cost of equipment increased? Oh, yes.

Q. Very much? A. Yes.

Q. Is there any agreement or understanding, or arrangement of any kind or character, by which the rates on coal have been fixed as between the defendant railroads? A. I know of none.

Q. Or any of them? A. I know of none.

Q. Has there been any such agreement? A. I do not know of any.

Q. Do you know of any agreement, or is there any agreement, which would in any way restrict the Lehigh Valley Railroad from either increasing or decreasing its rates at its own discretion at any time? A. I could in-

crease the rates, but I doubt whether I could hold them there. I could decrease the rates at the expense of the treasury.

Q. I am not asking you whether you could increase a rate above another company's as a commercial proposition, but is there any agreement that forbids you from doing that? A. None whatever.

Q. Or any understanding or agreement with any other railroad? A. None whatever.

Q. Is there any understanding, agreement, or restriction of any kind, as between the Lehigh Valley Railroad and other companies as to reducing rates? A. No, sir.

Q. Tidewater rate or any other rate? A. No.

Q. What are the Pennsylvania Railroad Company's rates on coal to tidewater? A. I cannot speak as to that. I think their rate is one dollar and forty cents.

Q. On prepared sizes? A. On prepared sizes. I am not certain about that and I would not like to testify about the rates of other companies.

Q. Do you know what the Lackawanna rates are A. I do not.

Q. Do you understand it to be less than the Lehigh Valley Railroad rate? A. I do not know whether it is or not. There cannot be any very marked difference in the rates; otherwise, shippers would get after us. I would not like to testify as to other roads.

Q. Is there any agreement or understanding between the coal companies as to the price of coal? A. I do not know of any.

Q. Is there any agreement or understanding which would restrict the Lehigh Valley Coal Company from reducing the price on coal at any time? A. There is no agreement, but I should be very loath to do it.

Q. There is no necessity of doing it as long as you can get the price, is there? A. I am trying to get the price.

Q. Have you entered into, or is there in existence, any kind of an arrangement which would prevent you, if you thought it was a good business proposition, from reduc-

ing the price of coal? A. There is no agreement to that effect nor has there been. I could reduce the price of coal if I desired to. I have done it at times, when I had quantities of unsalable coal on hand; but to do it would only invite corresponding action on the part of my competitors, and the result would be the same, except that each of us would have less money in the treasury. Ordinary commercial sense would prevent me from reducing the price of a commodity in which the amount of profit is already less than it ought to be.

Q. In other words, there is nothing but economic conditions that control the price? A. We cannot afford to sell coal for less than it is now and make money out if it. I could go in and reduce the price to all points we reach, and I would bring about commercial conditions that would invite other companies to do the same. I would not increase my tonnage and I would have pulled down prices all over the country. I would have depleted my own treasury as well as that of others and I would have been anything but faithful to the interests of the properties that I am endeavoring to serve.

Q. And any such reduction as that would result in a failure on the part of the Lehigh Valley Coal Company to meet its expenses? A. A very marked reduction in the price of coal would not leave any margin of profit to the Lehigh Valley Coal Company.

Q. Broadly speaking, either you or the Lehigh Valley Coal Company is free to market the product of coal that it has in any market, at any time, at any price that you and that company see fit; is that true? A. The Lehigh Valley Railroad Company has six thousand stockholders. I am President and, subject to the ordinary direction of the Board of Directors, I have absolute power in that matter. There is no combination whatever, nor has there been, that prevents me from managing that property in what I believe to be the best interests of its security holders, nor has there been in the past, nor will there be in the future while I am in charge of it.

Q. No restriction of any kind whatsoever? A. None

whatever. I manage it with due reference to the best interests of the security holders, with regard to commercial conditions, and as any prudent, conservative man would do; but I deprecate and avoid in every way undue and unreasonable competition, where no good result will come to any party whatever, not even the public.

By MR. TODD:

Q. Is the Lehigh Valley Railroad embraced in that statement, or the Coal Company? A. Both. I want to make the declaration as broad as I can put it in the English language.

Cross examination.

By MR. MCREYNOLDS:

Q. If I understand you properly, you were connected with the Erie Railroad as an officer from 1888 down to 1901? A. 1902, at which time I left the Erie and took entire and exclusive charge of the Lehigh Valley.

Q. During what portion of that time were you President of the Erie? A. Just before the reorganization; after Mr. King resigned as Receiver, I was made President of the New York, Lake Erie and Western and, on its reorganization, President of the Erie Railroad. I cannot give you that exact date, but it is a matter of record.

Q. That was about in 1895? A. About 1895; somewhere in there.

Q. And then from 1895 up to 1902 you were the President of the Erie? A. I was the President up to 1901 some time. When Mr. Underwood came in as President, I was Chairman of the Board.

Q. For how long a time were you Chairman of the Board of the Erie and of the Lehigh both? A. Oh, comparatively few months.

Q. You testified that, in 1895 or thereabouts, there was some sort of an arrangement or an attempt at an agreement amongst the parties in control of the various coal carrying railroads, looking to a percentage arrangement? A. On transportation; 1896, that was.

Q. Where were the meetings held that affected that matter? A. That was held at the Trunk Line Association; that is my recollection.

Q. Where is that, please? A. Liberty Street.

Q. In New York city? A. Yes.

Q. Who were present at those meetings? A. I cannot recall, in 1896. Mr. Roberts, who was then President of the Pennsylvania Road, was there. I think Mr. Maxwell represented the Jersey Central; Mr. Sloan, who is now dead, the Lackawanna; and Messrs. Welsh and Harris the Reading. I do not recall who represented the other companies.

Q. What were you attempting in those meetings to arrive at? A. What I have stated, a distribution of the cars and the transportation on colliery production, for the purpose of relieving our collieries and removing any cause of complaint on the part of individual operators, who would ship their coal down and block our terminals and our roads.

Q. How were those percentages to be ascertained and how was each road to know what it was to do from month to month? A. It could not, and it did not, because the whole arrangement was ineffective.

Q. Did not each road get, at the end of each month, a statement of what every other road was doing? A. I assume they did.

Q. Your road did? A. Yes.

Q. And you made an effort to keep your tonnage substantially in harmony with your percentage? A. I tried to keep within reason there.

Q. How did you manage that practically? There were a great many collieries along your road? A. Yes.

Q. As a practical matter, how did you undertake to keep your transportation substantially in harmony with the percentage that had been suggested? A. We could not do that and we did not do it. I found it was not regarded and did not pay much attention to it myself.

Q. I know, but you said, if I understood, that you made an effort to do it. How was that effort directed?

A. The effort was directed to clearing up our terminals and not to distribute our cars so as to give a man who had a hundred cars standing down at tidewater which were not unloaded, his proportion which he would be entitled to under ordinary conditions.

Q. In other words, you knew what the capacity of each colliery was along your road? A. We were supposed to; whether we did or not, I do not know. That was largely in the hands of the transportation department.

Q. You took up the adjustment of the cars sent to each colliery, to divide out amongst these people your total? A. No; our total exclusive of the capacity of the collieries to each other and assuming that John Jones had no coal standing down here which he had not marketed. If he had, we would have given his cars to somebody else.

Q. In other words, you endeavored to carry out this contract, so far as you did endeavor to carry it out, through means of the distribution of cars to the various collieries; is not that so? A. Yes, possibly.

Q. Is it not so really? A. No, because it was a tentative agreement, tentative only.

Q. While you were with the Erie Railroad Company, and since you have been with the Lehigh Valley Railroad Company, have you received each month the statistics prepared by Mr. Ruley? A. I have.

Q. Prior to the award of the Strike Commission, what was the purpose of those statistics? A. Prior to the award?

Q. Yes. A. The anthracite industry is an old industry. It has settled into pretty well defined lines. It is a limited industry and, naturally, we were anxious to know what our competitors and what everybody was doing, and it was a matter of understanding between us that we should report our tonnage to one man, who would make up statistics, and it was commenced years before I ever came into the business and has obtained since.

Q. So each month during the time that you were Pres-

ident of the Erie and since the time that you have been connected with the Lehigh Valley, you have obtained these Ruley statistics, which show you what your competitors are doing? A. I do not know how far back that goes. I cannot locate that. I think it obtained on the Erie, although there I did not pay very much attention to the coal traffic, because it was not as large as our merchandise traffic; but we have had general notice of what our competitors are doing.

Q. That shows you what your competing railroads are shipping? A. Yes.

Q. And also it shows what your competing companies are getting for their coal? A. Yes; the latter in order that we may settle with our individual contracts.

Q. You know then at the end of each month how much coal has been sold by the Lackawanna Railroad Company and what is its tidewater price for it? A. I know how much they have reported to Mr. Ruley as having sold and what they reported the price.

Q. So, unless they have lied to Mr. Ruley, you know the facts? A. I assume they are facts.

Q. And you report to Mr. Ruley each month what you have done? A. I do.

Q. And you get from Mr. Ruley a compilation at the end of each month showing all of the things which have been reported by the several companies? A. Yes, sir.

Q. As a result of these reports which you get from Mr. Ruley, you can tell if there has been any cutting of prices, can you not? A. No; with as large a tonnage as that, it is very difficult to locate any cutting of prices. I have known of the cutting of prices by my competitors which did not show in those reports.

Q. It cannot be very material without showing in those reports, can it, or very long continued? A. Yes, it might possibly, and it might on some particular size, and yet not seriously affect the total average.

Q. Do you remember the fact, years ago, that there was a very considerable complaint of the cutting of prices of coal in Brooklyn? A. I do not recollect. That might

have come to the sales agent, but I never got as close to the trade as that.

Q. You stated that, in the Wyoming Region, you were able to run your mines at the present time at their full capacity, but that in the Lower Region you were not? A. Yes.

Q. About how much are you running those mines in the Lower Region? A. I am running the mines in the Lower Region probably less than half time.

Q. Did you ever try reducing the price of the coals from those regions, in order to put them in the market? A. I cannot afford to do it. I would lose money. The market will not take it, and he is a poor merchant who sells his goods for less than cost, when those goods are of a character that are absolutely impossible to recreate.

Q. So the result of it is then, at the present time, your mines in the Lower Region are shut down half the time? A. About that, yes.

Q. Does that apply to the mines of the parties from whom you take coal under the sixty-five per cent. contracts? A. They can only, under their contracts, run as our own mines run.

Q. So, when you shut down for the time, they are shut down for the time? A. They are, and there is another reason, if you will allow me. Our contract with our miners under the Strike Award expired on April the 1st, 1909. We anticipated serious trouble at that time with our labor. We knew they would demand advances. It was impossible for us to give them. In order to protect the public and to continue to supply coal, we were compelled to create an abnormal stock of coal on hand, and on the first day of April the Lehigh Valley Coal Company had on hand a million and a quarter tons of coal at her different storage plants, involving a value of between, including the freight, seven and eight million dollars. I am endeavoring to reduce that stock of coal on hand, which is largely from the Lower Valley, and that is the only reason why I cannot market all the coal that I would.

The markets would not take it, but I am endeavoring, and very slowly, but surely I hope, decreasing that stock in hand.

Q. In this Lower Region where you operate, are there any independent operators who ship their coals over the rails of the Lehigh Valley? A. There are, and they are running full time.

Q. Where do they sell their coal? A. Markle & Company is running full time and we sell his coal for him.

Q. Where? A. Tidewater, any place he instructs us to. His coal is of a superior quality and brings a higher price in the market, and is more cheaply mined than any coal in that or probably any other region, by reason of natural drainage; and there are other operators running as well, individual operators.

Q. You think they are running full time? A. I know they are. They are probably selling their coal at a cut rate. I do not know. I cannot afford to.

Q. Now right there; what proportion of the coal that moves over the rails of the Lehigh Valley Railroad Company is produced by some company which it controls, or is purchased by some such company, under sixty-five per cent. contracts? A. I will see if I can give you that. (Referring to Annual Report.) The total production of anthracite coal from all lands owned and controlled by the Lehigh Valley Coal Company and other companies in which it and the Lehigh Valley Railroad Company are interested through ownership of stock, was 9,263,899 gross tons for the fiscal year ending June 30th, 1908.

By Mr. Platt:

Q. Some of that, however, was produced by lessees of the Lehigh Valley Coal Company? A. Oh, yes. I would very much prefer to furnish a statement on that which you have asked, in order to be absolutely accurate.

By Mr. McReynolds:

Q. I do not care for it down to the last one thousand tons. If you can give it to me approximately, it may save us all bother. A. The Lehigh Valley Coal

Company and affiliated companies mined and produced during the year eighty-five and sixty-nine one hundredths per cent. of the anthracite coal transported by the Lehigh Valley Railroad. That probably will answer your question.

Q. That eighty-five per cent. refers to all the coal that moves in either direction over the lines of the Lehigh Valley Road that is under its control; that is, the Lehigh Valley Coal Company, moving in whatever direction it goes? A. Yes.

Q. What proportion would you say of the coals that are brought and sold at tidewater are under the control, either by reason of mines or by reason of purchase, of the Lehigh Valley Coal Company? A. I will give you the exact figures on that. Those figures have been recently made up and will be furnished to you, so that you can put them in the record.

Q. When you were the president of the Erie Railroad Company, what was your relationship to the Hillside Coal Company? A. The Erie Railroad Company owns the stock of the Hillside Coal Company.

Q. Were you the president of the Coal Company? A. I cannot recall whether I was or not. I do not think I was.

Q. While you were president of the Erie Railroad Company, was it a part of your duty as president to fix coal rates? A. No. They were to be fixed by the executive officers, traffic managers.

Q. And that matter did not come directly to you? A. It would not come directly to me, unless it was necessary to consult me in some way about extraordinary conditions. Ordinarily the traffic managers of the road fixed the rates.

Q. Who fixes now over the Lehigh Valley Railroad the rates on coal? A. The traffic manager.

Q. Is he at liberty to change them? A. He is at liberty to do it, but I doubt whether he would do so without consultation, because it is an important matter.

Q. Who fixes the selling prices at tidewater at which the

coals of the Lehigh Valley Railroad are sold? A. They are fixed by the sales agent.

Q. Is he at liberty to make any change in them without consultation with you? A. He has perfect authority to manage the Coal Company, but he would undoubtedly consult with me if it came to any marked variation from prices that I had established.

Q. When did you last establish those prices? A. I do not recollect. There has not been any change particularly in prices since the last time, when our friend John Mitchell and his esteemed political compatriots succeeded in doing what we could not do, get up the price of coal.

Q. After this interference, as you say, by Mitchell, how was the price of coal fixed? A. I do not know, when you come to that, how it was fixed. I presume likely there was some consultation as to what we were going to do.

Q. Between whom? A. The various parties in interest, I suppose.

Q. Who were they? A. The various coal carrying companies, or the various coal producers. I think there was consultation with individual operators as to what coal ought to be in consideration of the great advance in cost of producing.

Q. There was a general consultation? A. No; there was not any general consultation.

Q. Whom did you consult with about it? A. I do not recollect now. I think probably I consulted with Mr. Baer; very likely I asked Mr. Truesdale what he was going to do. I know I asked Mr. Walter what he was going to charge for coal.

Q. The result of this matter that you all came to the conclusion to sell at the same price? A. I do not know whether we did. I know they did practically sell it at the same price. The Reading is the largest producer and, with the qualities of our coal and all, I saw no reason why I should sell the coal lower than the others. I would like to get higher, and do on some grades.

Q. Prior to this last advance on coal, were all the coal

railroads selling at the same price? A. As a rule, I think they were. I think there were undoubtedly variations. As an effect of the conditions the strike brought about, coal was selling at from ten and twelve to fifteen dollars a ton by the individual operators during that strike, while the large coal companies, what are called the railroad coal companies, held to a uniform price of five dollars. We believed that that was a remunerative price to us, a fair price, and that the public could pay it, and, notwithstanding that individual operators were selling their coal at from ten to twelve dollars per ton, we held absolutely to our price of five dollars. It took a corporation without a soul to consider that they had any duties to the public to perform.

Q. And since then you have been sticking to the same price? A. We have, and I will advance it, if commercial conditions will admit of it, which I doubt. The cost of anthracite coal in this country will never be what it was in the past. At one of our mines we are raising fourteen tons of water to every ton of coal we raise, and it costs as much to raise the water as it does the coal. The mines are getting deeper; the haulage underground is longer; material is advancing. We are hampered by the interference of unionism, as to the amount of work the men should perform. Our breakers, costing from $500,000 to $600,000, even at times when there is a full demand, can only run nine hours, under the Award. That is what the interference of politicians in business will accomplish.

Q. The cost of production varies very materially in different mines? A. It does.

Q. The owner of one colliery, therefore, might make money when another could not? A. He might.

Q. What would you say was the difference in the cost of production? A. The same difference that there would be in the size of a piece of chalk—an impossibility of saying. The Wyoming mines lie in flat, horizontal veins, from five to ten feet thick. They are owned by the coal companies without royalty, without fixed charges, and many of them without water. They can be mined very cheaply. Others are held on high royalties. We are paying as much

as sixty-five cents a ton for some coal in the ground. On the other side of the mountain, in the Lehigh and Mahanoy Region the veins are, some of them, almost vertical; they turn over on each other. They are from ten to forty feet thick. They require immense cost of timbering. The water is something terrific; but, naturally in there the coal is harder, bears handling in transportation better than the other, is slow burning and is preferred for furnaces and house uses of that character. The other is a lighter, free burning, white ash coal and is preferred for ranges, base-burning stoves and consumption of that character.

Q. So would you say that there is a difference of perhaps a dollar a ton in the production of coal at different mines? A. I would not like to make a venture on that. It would be a guess and I do not like to testify to guesswork.

Q. Anyhow, you think there is a very large difference? A. I would not say there was a very large difference; I say there is a difference in the cost of producing coal. One man may own his coal lands absolutely, and another man pay a sixty-five cents per ton royalty, and that makes a difference. One may be a good miner, good merchant and good business man, and his competitor may be neither. What the difference in cost is to those individuals, is going too far into the speculative field for me to undertake.

Q. While you were President of the Erie, what was the first large purchase of coal lands or of coal companies which you made? A. We did not make any in the Erie until we made the Simpson & Watkins and the Pennsylvania Coal Company purchases.

Q. Which of those was first? A. The Simpson & Watkins was first. Let me put those in chronological order. The first transaction on the Erie was the purchase of the New York, Susquehanna and Western stock, and the exchange of that for Erie stocks. The second was the taking of an interest in the stock of the Temple Iron Company by the Erie Railroad. The third was the purchase of the Pennsylvania Coal Company.

Q. Let us take those up now. Who negotiated the purchase of the stock of the New York, Susquehanna and Western, for the Erie? A. Moore & Schley.

Q. Were you the head of the Erie at that time? A. I was.

Q. What was the relationship existing between the Erie and the New York, Susquehanna and Western just prior to that purchase? A. The same that there is between any railroads, any other roads. The New York, Susquehanna and Western began at Edgewater, New Jersey, crossed us at Paterson, ended at Stroudsburg; had a connection there with the Lackawanna, who gave it same tonnage. Afterwards they built the Wilkes-Barre and Eastern, from Stroudsburg to Wilkes-Barre, and leased it to themselves.

Q. Both roads lead from the anthracite region down to New York harbor? A. They did to some extent.

Q. And they were in competition for the traffic? A. Not necessarily, any more than in competition for every kind of business.

Q. But, were they? A. I do not know how to express that. There was no competition between them of any moment. They carried coal and we carried coal. They carried from different mines from what we carried from.

Q. But you both could have carried from the same mines? A. I do not just see.

Q. Could not all the tonnage of the Pennsylvania Coal Company have moved over either road? A. The Susquehanna and Western?

Q. Yes. A. They could not haul it without losing the entire haul on their own road. It would have been a physical impossibility.

Q. They did cross? A. They had a connection, and the New York, Susquehanna and Western crossed the line of the Erie and Wyoming Valley somewhere down in the lower valley. For the Pennsylvania Coal Company to have turned any traffic over to them would have been a back haul and they would have lost all the money that they earned on their own railroad in hauling it up and delivering it to the Erie.

Q. Certainly, but the Pennsylvania Coal Company railroad did not reach to tide? A. No; it reached to Hawley.

Q. What was your purpose in purchasing that stock of the New York, Susquehanna and Western? A. The New York, Susquehanna and Western had valuable terminals at Edgewater; it had good terminals at Paterson, and we could use it to very good advantage in interchange of business between us. It had pretty good coal properties, which it controlled, on what is known as the Susquehanna Connecting Road.

Q. How did the ownership of those coal properties help the Erie? A. It did not particularly help the Erie, but it afforded a good business for the Susquehanna, and would have made that a remunerative enterprise.

Q. And you thought that was a good thing to buy? A. I did.

Q. How did you get the money to buy it? A. I did not get any. It did not take any. We bought by interchange of stock.

Q. You issued Erie stock? A. We issued Erie stock.

Q. Coming to the Temple Iron Company, who originated that plan? A. Simpson & Watkins, I think originated the idea of wanting to sell their properties.

Q. Who were Simpson & Watkins? A. Simpson & Watkins were individual operators there who controlled mines on the line of the Erie and on the line of the Lehigh and shipped over that and the Lackawanna, and also the Jersey Central, to some extent.

Q. Those lines were all in competition for their business? A. They were.

Q. Who suggested the plan of having the Temple Iron Company buy out Simpson & Watkins? A. I do not know who suggested it. I did all I could to have the Simpson & Watkins property purchased, because I wanted to retain to the Erie Railroad the business that she had heretofore enjoyed from that property. I thought that bunch of tonnage might become mighty attractive to somebody to enter into that field, and some

of my competitors might have bought that property and taken that tonnage away from me. If I had had money or credit, I would not have asked any help. I would have taken it alone.

Q. Who were your competitors you were afraid of? A. The Lehigh Valley might have taken it; the Lackawanna might have taken it; the Jersey Central could have reached it.

Q. Where was the coal from the Simpson & Watkins collieries moving at that time? A. Moved over all of those roads.

Q. Where? To what point? A. All over, wherever they could find a market for it.

Q. Was it coming to tidewater? A. Some of it came to tidewater. Some of it went West, to different points.

Q. Outside of the State of Pennsylvania? A. They marketed some in Pennsylvania. They marketed it as any merchant would, wherever they could find a market.

Q. But, I mean, it went to various points outside of the State of Pennsylvania? A. Oh, yes.

Q. Did it take any money to put through this Temple Iron Company deal? A. I think it did.

Q. Who furnished it? A. A syndicate furnished it.

Q. Who was the syndicate? A. I do not know. I think that is a matter of record here. I did not know until I read that who the syndicate was.

Q. How did the Erie Railroad Company come in? What did it do? A. It endorsed the contract, to the effect that, in case of her inability to earn a certain amount of money, she would furnish it, furnish it to the extent of the per cent. that she had agreed to, that was nominated in the agreement.

Q. In other words, the Erie Railroad Company guaranteed a certain percentage of the securities of the Temple Iron Company? A. No; because the Temple Iron Company might have failed to earn that.

Q. How was the percentage which the Erie should guarantee determined? A. That was determined, as I

recall it, by Mr. Baer, Mr. Stetson and somebody else. Just how they worked it out, I do not know. I did not ask.

Q. You took what they gave? A. I took what they gave. I had confidence in the integrity and judgment of those gentlemen.

Q. You swallowed the pill as it was handed to you? A. I did, and because of this; the Erie Railroad had just been reorganized, and there was not a banker in London and few in New York that believed she could live. I believed she could, but not if she lost tonnage, and I would take a chance on anything to hold my tonnage, and I did it. If it afterwards got away from them, it was not my fault.

Q. So your purpose in going into the Temple Iron Company was to hold on to your tonnage? A. It was.

Q. Was the purpose successful? A. It was; and not only that, I believed the properties of Simpson & Watkins could be made a commercial success. I believed they were valuable, and I had an examination made and was convinced that they were valuable properties. I did not figure there was going to be a strike in 1900, and another in 1902, and that we would have to put up. Several companies put up half a million dollars, which we did; but, I am happy to say that the Temple Iron Company has redeemed all of her bonds which she issued, except $800,000 in the hands of the public, and has paid off every dollar that was ever advanced under those guarantees.

Q. That statement does not conform with the testimony of Mr. Law. A. Mr. Law did not know what was going to happen.

Q. When did this thing which was going to happen, happen? A. Two or three weeks ago. We had a large amount of money in the treasury, and the question was, should we buy securities with that, as we could not redeem our bonds short of one hundred and ten, or should we refund the advances; and we thought it was good policy and good business to refund the money which we had borrowed.

Q. And that happened two or three weeks ago? A.

Yes, sir. Mr. Law's testimony is perfectly correct, but he did not know just what we were doing.

Q. You said the competition between these roads has at some times been very severe in reference to coal lands, as I understood you? A. Yes, sir.

Q. Between what roads has that competition been particularly severe? A. I think all of them, in times past.

Q. What was the occasion of that competition? What was the underlying motive for it? A. To secure absolutely to their own roads the tonnage for the future.

Q. One road would think that, if another road bought the property, it would lose the tonnage? A. Yes, sir.

Q. Therefore, it would go into the market for it? A. Yes, sir.

Q. There was tonnage there which might be reached over one or two or three or four lines, and they were competing in order to control it; is that right? A. That is correct.

Q. Coming now to this Pennsylvania Coal Company; how did the Erie Railroad Company get the money to purchase that? A. Borrowed it. The Pennsylvania Coal Company was one of the oldest and most valuable properties in the country. They had been unusually successful. They had those low, flat veins to which I have referred, of great depth, and with little or no royalties. They were threatening, and had started to build a competing road to the Hudson River. I did not care how many roads they built to the Hudson River, but I fully understood that, if they built that road and took the tonnage away that the Erie had carried for forty years, that the Erie Railroad would not have enough, and I knew of no law, legal or moral, that forbade me, as the president of the road, from using every possible means at my command to secure that property; and I worked for two years to get J. P. Morgan & Co. to go in and buy that property.

Q. The Pennsylvania Coal Company were able to build that road? A. They were, absolutely.

Q. But finally Morgan & Co. furnished the Erie the money to buy the Pennsylvania Coal Company? A.

No, Morgan & Co. bought that property and the Erie took it over from them and issued collateral trust bonds on the property. It was the best thing that ever happened to the Erie Railroad. I am sorry now I did it. I would have scooped it in now for the Lehigh Valley. It was a bitter pill to some of our competitors when the Erie took over that property, and you can bet I did not consult with them or make any agreement with them.

Q. You said the Pennsylvania Coal Company owned a line which connected with its lines to the West, and with the Erie Railroad Company over at Hawley, I believe? A. Yes. They connected with the Lehigh Valley on the lower end, and I think they connected with the Susquehanna and Western on the lower end, and connected at Hawley with the Erie.

Q. You said the Erie Railroad used to haul coals for the Pennsylvania from Hawley down to tidewater at New York? A. Yes.

Q. And there was a division of rates? A. Yes.

Q. Do you remember what it was? A. I do not. I wish I did. I would be very glad to give it to you.

Q. You do not know what the Pennsylvania was getting for its part of the haul? A. No. I only remember that they said they were not getting enough. I remember that distinctly. There is a little history there that I will be glad to give you; it may enlighten you. The line from Hawley to the mines of the Pennsylvania Coal Company was formerly a gravity road. I assume you know what that is. The Erie Railroad, in transporting their coal under the arrangement during Gould's administration, wanted to save that gravity haul. They organized the Erie and Wyoming Valley and built a line from Hawley to the mines of the Pennsylvania Coal Company, a distance of about forty miles as I recall, each party owning one half. By some arrangement, never explained and never understood, between the time that Mr. Jewett went out and Mr. King came in as president, the control of that stock to the extent of a sufficient number of shares to increase theirs to fifty-one per cent. and decrease the

Erie's to forty-nine per cent., passed from the possession of the Erie Railroad, the result of which was that the Pennsylvania Coal Company became fully and absolutely independent and without any control from the Erie, were extravagant in their expenditures upon it, and the Erie could neither get dividends nor have anything to say about it, and that made some friction. Finally, in order to settle that, I sold the Erie's interest, finding I could do nothing myself and needing the money badly, as they always did, to the Pennsylvania Coal Company for a round sum, and took a trackage contract over the road, which, however, we never exercised. Subsequently the purchase by the Erie of the Pennsylvania Coal Company cleared up the whole situation and left it in their hands. It is an illustration, maybe, in my own case of the evil that men do that lives after them.

Q. What other railroads are large owners of stock in the Lehigh Valley Railroad Company? A. The Jersey Central has, I think, twenty thousand shares, the Reading has—I cannot recollect; I think it is in the testimony now. The Lackawanna has also an interest.

Q. When were those interests acquired? A. I think they were acquired prior to my administration. Is not that a matter of record?

Q. You do not know the occasion for it? A. As the President of the Erie Railroad I consented, or agreed, to the purchase of, I think, about a million dollars of that stock. I believed it to be a good investment. It was selling at a low price. I thought the road had great capacity, and I still think so. That my judgment is confirmed, is evidenced by the fact that the Lake Shore made over three million dollars from the purchase and sale of their interest in that Lehigh Valley stock.

Q. While you were with the Erie Railroad Company, there was some sort of an arrangement for the purchase of a large amount of Lehigh Valley stock and dividing it up among other railroads? A. I never knew of any such arrangement. What I did for the Erie, I did specifically for them in the purchase of the amount I referred to.

Q. The Erie purchased a million? A. Yes, sir.

Q. And afterwards sold it? A. Yes, sir.

Q. The Lake Shore purchased a large amount? A. Yes.

Q. And afterwards sold it? A. Yes.

Q. Who negotiated with you, as the President of the Erie Railroad, for the purchase of this Lehigh Valley stock? A. I think I took it up with Mr. Bacon, of J. P. Morgan & Co., as my recollection is at the moment.

Q. How did the Erie get the money to pay for it? A. Borrowed it, as she always does, and afterwards paid for it, took it up.

Q. Were all these stocks purchased at the same time? A. I do not understand that they were.

Q. Do you know or not about that? A. I do not know absolutely, but I am quite certain that the purchases were not made at the same time. What was known as the Packer stock was in the market; that is the stock left by Asa Packer and held by the Lehigh College as an investment, and that was on the market and it was believed it was a good thing to take up that stock, that the thing could be worked out and made profitable.

Q. You say that it was supposed that it was a good thing to take up that stock. Who supposed it? A. I did, for one.

Q. Who else? A. I do not know. I assume the other people that purchased it did, had corresponding views. The stock was purchased, I think considerably below forty dollars a share.

Q. Your negotiations were with Mr. Bacon, of Morgan & Co.? A. Yes, as I recall it now. I will not be certain of that.

Q. Did you know at that time that the other railroads intended to purchase? A. I thought very likely they would.

Q. Were you consulted when the present tidewater rates were fixed on anthracite coal? A. I do not think I was. I have no recollection of it.

Q. Do you know when they were fixed? A. I do not.

Q. You cannot give us any information as to how they were fixed? A. No, I cannot. I presume they were the result of consultation among our freight traffic managers, as freight rates always are and always have been.

Q. Do you know, as a matter of fact, that prior to 1901 the Lehigh Valley Railroad was accustomed to transport coal to tidewater upon a forty per cent. basis? A. I have understood so.

Q. When did it cease to do that? A. I do not know. You mean forty per cent. of the selling price at tidewater?

Q. For its freight. A. Yes, I have understood that to be the case.

Q. Was that same practice indulged in by the Erie while you were with it? A. I never knew it to be done by the Erie. I never knew of it and I do not think it was. It has not been done on the Lehigh Valley since my administration.

Q. Do you recall that the Lehigh Valley Railroad Company ceased to transport on that forty per cent. basis in the Fall of 1901, and established a flat rate? A. I do not know what they did. That is before my administration there.

Q. The price of coal at tidewater and along the line of the Lehigh Valley Railroad Company; how are line prices fixed, if at all, with reference to tidewater prices? A. I do not know how they are fixed. They are fixed by the sales agent. The line trade is not as competitive as the tidewater trade.

Q. What do you mean by that? A. I mean that the competition at line points is not as severe as it is at tidewater. Tidewater is the dumping ground for all surplus that everybody has.

Q. Competition between whom? A. The railroads and coal companies and coal miners.

Q. Along the line, your railroad controls practically? A. Not absolutely, because they are cut in by other lines; but, on short hauls, your switching charges can impinge on the tonnage of others, and do, to a large extent.

Q. Does the Lehigh Valley Coal Company deal in bituminous coal? A. It owns a property called the Snow Shoe Mine on the line of the Pennsylvania Railroad and mines coal from it for its own consumption only. It is not a dealer in bituminous coal.

Q. Can you tell us about the annual contracts for the sale of the small sizes of coal here at New York and about New York harbor? A. No, I do not know the prices of those. I know those contracts are made annually, because a manufacturer must know what his fuel is going to cost him, and they are made the subject of annual contracts and the prices are fixed by the sales agents of the various companies, each for his own.

Q. Settlements under those contracts; are they made on the same terms for every month, or do those contracts recite that it shall be paid straight through the year? A. I do not know about other companies. In our case we make a specific price throughout the year. If a manufacturer wants a hundred thousand tons of coal and we have it to sell and can agree on a price, we sell it, and we expect him to take it and he pays so much per ton of coal as it is delivered. It is a commercial necessity in the conduct of business.

Q. Those contracts apply to steam sizes? A. Steam sizes.

Q. So that that gives a uniform price for coals delivered at different times during the year? A. Yes, delivered under those contracts. Of course, there may be small buyers who take whatever the market may be, from time to time, in limited quantities.

Q. Are those contracts made in reference to broken sizes too? A. Yes, broken coal which goes to gas companies; that is also made in the same manner.

By MR. PLATT:

Q. By broken coal, you mean the big lump coal? A. Yes; I do not mean prepared sizes.

Re-direct examination.

By JUDGE MOOT:

Q. There is an exhibit in evidence here that shows that the New York, Susquehanna and Western Railroad Company is now a company that has a deficit for the last year or two. There is also another exhibit in evidence here which shows that some coal mines that it used to carry the coal from to tidewater or elsewhere, no longer send their coal over its lines, but apparently showing that if those mines still did send coal over its lines, it would have a large coal tonnage. What, may I ask, was the reason that prompted you to purchase the New York, Susquehanna and Western stock by an exchange of Erie stock? A. I believed that line could be more than self-supporting. I had a careful examination made of the Susquehanna Connecting Road and the mines on it, which were tied to the Susquehanna and Western, and, with the advantages of the terminals to which I have heretofore referred, I believed it could be made a remunerative enterprise, which would strengthen the credit of the Erie, attract attention to it and show that we were not dead. There is no reason why that should not have been a complete success. I understand, indirectly, that they have parted with some of that property which was tied to them and which they ought to have carried. They ought never to have done it, in my judgment; but, as I am not responsible for it, it is a matter I do not care to criticise farther than that. The property could and ought to be made a self-sustaining one. I made it one, and there is no reason it should not continue.

Q. It appears in evidence that the Pennsylvania Coal Company had made some contracts with the Erie Railroad Company with reference to the transportation of the coal of the Pennsylvania Coal Company over the tracks of the Erie Railway to tidewater, and other parties? A. When?

Q. From time to time previous to your purchase of the stock of the Pennsylvania Coal Company. Having those generally in mind, without having their details in mind, did you give any consideration to those in making the pur-

chase of the Pennsylvania Coal Company's stock, or what figure did that cut? A. They cut no figure as far as I was concerned. The Pennsylvania Coal Company, during this period of Gould's administration and, I think, possibly antedating that, had specific contracts with the Erie Railroad for transportation on varying terms. Just what those were, I do not recall; I knew at that time. It might have been a proportion of the tidewater price, it might have been a specific sum. In the purchase of the Pennsylvania Coal Company, the only consideration to my mind was the absolute control of that property and the holding of its tonnage and the earnings of its mines, which were large, because they can produce more cheaply, probably, than any other mines there except the Lackawanna, to that company. It was an absolute necessity, to escape bankruptcy, to hold those, and it made a strong company and a dividend-paying one of it.

Q. So that, as between the permanent arrangement made by the purchase and any arrangement made by contracts which might be broken, you preferred the permanent arrangement? A. All freight traffic contracts are unstable and uncertain, continuing causes of friction and trouble, and you cannot rely on them because there are no means of enforcing them. You can go into court to enforce them, and they are perfectly legal; but you get a verdict that does you no good, if you have lost your tonnage.

Q. You have spoken of being chairman of the Board of the Lehigh and the Erie for a few months. I assume you resigned from the Erie Board when you took charge of the Lehigh as its President? A. I did.

Q. Why did you not continue to be chairman of the Erie Board? A. I did not care to take the responsibilities. I had enough to do to work out this problem.

Q. You said you tried to keep within reason, when you were with the Erie after this talk in 1896 about the distribution of cars, in connection with the transportation of coal. For how long did you try to keep within reason after that time, as near as you can remember? A. When I found that there was not enough in one hundred per cent. to go around.

Q. Will you say some months or some years? A. I would not like to fix a date. If a man is not going to keep an understanding, he is not going to give public notice. I found my competitors were not paying much attention to it and I thought I had better look out for myself.

Q. Shortly after the talk or a long time afterwards? A. I do not think that tentative understanding entered into ever had any practical result.

Q. In other words, you did not think enough of it —— A. I found everybody went along and mined and marketed all the coal they could. It might have had a cooling effect on individual operators, and possibly affected them to the extent that they did not pile up unsold product at terminals as badly as they had been doing.

Q. For about how long a time? A. Well, until they were caught.

Q. I wish you would explain how it is that a cut might be serious and not be known, a cut in prices? A. On a large tonnage, a fifteen or ten cent cut does not make an appreciable effect. To illustrate; a few years ago, I had a surplus of steam sizes which I could not dispose of. They are not as marketable as the Wyoming free-burning sizes, and I had accumulated about six hundred thousand tons of it. I was forced to market it and I could not do it at the prevailing prices. I reduced the price twenty-five cents a ton, and I did not notify anybody. Eventually they found it out and they wanted to know why. I explained it and they kicked, and that is all. I had got rid of my tonnage in the meantime. In that large tonnage and with the period of delivery extended over a long time, it would not show specifically. I know that individual operators are selling coal for less than I am in many instances, but I cannot afford to meet it.

By MR. PLATT:

Q. Was this transaction on the Lehigh or on the Erie? A. That is on the Lehigh.

By JUDGE MOOT:

Q. And the reports of the Lehigh Valley for the period of time for which you where doing this, give the average

prices with such changes as that very transaction produced, in the absolute figures? A. Oh, yes, we gave the absolute figures on it. I won't lie on a matter where the truth will serve me better. I would not anyway, that's no way to deceive a competitor, to attempt to falsify your statements.

Q. This plan of 1876 has been called to your attention. A. I had only just gotten out of the army then.

Q. It appears that the Lehigh, and also the Delaware, Lackawanna and Western, have built through roads to Buffalo since that time, principally for the purpose of carrying their coal, in part, to Buffalo. What reason, as a railroad operating man, can you think of for either of those roads being built to Buffalo after the plan of 1876, if they were in that combine of 1876, which controlled the whole matter? A. It would take a somewhat lengthy answer to cover all that, but I will try to. I never heard of the plan of 1876 until I heard it in here. I am very confident that it was like all schemes for controlling commercial conditions, and that it failed. Originally the Erie Railroad was the only line to Buffalo in that section. The Delaware and Lackawanna came up and connected with them at Great Bend, and they carried the tonnage. When Mr. Gould bought the Lackawanna road, he probably saw there was money in forming a construction company and putting it through to Buffalo, and he did so, and he took that tonnage away from the Erie. Subsequently the Lehigh Valley, through its Pennsylvania and New York railroad, connected with the Erie Railroad at Waverly, had trackage over the Erie Railroad to Buffalo, and owned its own terminal there. The result of that was that the Erie built up a very large Buffalo business. Like other people having a lot of money, making lots of money out of their coal in those days, and having possibly the pride of wealth, they thought it would be a good thing to have a railroad of their own up there. I made every endeavor on the part of the Erie to prevent the building of the Lehigh Valley to Buffalo. I am glad to say now I failed. I might be out of a job if I had not.

At all events, they went on to Buffalo and there are now three parallel and competing lines. If the Erie could have been put in physical shape to handle that entire business, I think it would have been better for all interests, for the merchant, the consumer and the country itself. The production of unnecessary transportation, like that of anything else, is an economic waste. The building of the West Shore and the Nickel Plate alongside of roads that could do the work cheaper than they could, was an absolute crime. Had half of that money been expended on the betterment of the existing lines, they could have served the public better and more economically.

Q In other words, the consumer has to pay the interest on all this extra capitalization that builds needless lines of railroad to get coal to market? A. The public pays the price every time. We can advance miners' wages at the behest of politicians, but the public pays the bill for coal.

Re-cross examination.

By Mr. McReynolds:

Q. I omitted to ask you about one thing. How often do the directors of the Temple Iron Company meet, and where? A. The meetings are usually held here, sometimes in Philadelphia, but there are no stated meetings. They are held on call.

Q. About how many meetings do they hold a year? A. I think we would probably average eight or nine meetings a year.

Q. Are the presidents of the roads who compose the directorate generally present. A. As a rule.

Q. Are any other meetings of the presidents of these Railroad Companies held? A. No. There are occasional meetings of the Trunk Line Traffic Association, on general freight matters and passenger matters and such things as that.

Q. No meetings of the anthracite coal carrying pres-

idents, as such? A. No meeting of the anthracite coal carrying presidents, as such, has been held, to my recollection, since 1896.

Q. Nor is there any informal coming together of these gentlemen? A. There is not. I consult with my competitors as every avocation in life does, but I have yet to make an agreement with them.

Q. You consult with them about rates? A. I ask them what their rates are and what they are going to do. I ask them their prices on coal and how much they are marketing, how business is, and the natural conversation that would ensue between gentlemen in the same line of business.

Q. You exchange that information freely? A. We do.

Q. You know what your competitors are going to sell coal at next month? A. No—— if I have any doubts, I ask them, and I presume they tell me the truth.

Q. And if they have any doubts, they ask you? A. Yes, sir.

Q. And, of course, you tell them the truth? A. I do, yes. I will not lie to my competitors about the price of coal or rates. They would find me out if I did, and I would lose whatever little shred of reputation I have left.

Q. You would not make a general change in the price of coal without consultation with your competitors? A. I would, if the market would admit of it and I could sell it.

Q. What do you mean by that? A. I mean, if commercial conditions were such that I could raise the price of coal twenty-five cents a ton, I would do it and would not ask a man or tell him unless he asked me.

Q. How about reducing the price? A. I would be a very poor merchant if I did that, although I have a perfect right to do that.

By Mr. Platt:

Q. If your competitor reduced the price, would you reduce yours? A. I would be forced to, yes.

By Mr. McReynolds:

Q. Why? A. How would I sell my coal? Would you

buy my coal at twenty-five cents more a ton than you could buy my competitor's for?

Q. So if you reduced yours twenty-five, you think the others would have to reduce theirs? A. I would pull down the whole industry.

Q. And, if you would advance yours twenty-five, what would you think of that? A. There might be market conditions at points which I reached and which they did not which would permit me to get a little larger price than they are getting, but at tidewater I certainly could not get any more than they do, nor at competitive points.

Q. So that the price at tidewater must be fixed by the man who will sell the cheapest? A. It is. The anthracite industry is not a new industry. It is an old one. It is one of the most enticing that men ever entered into and one in which more money has been lost in the conduct of it, than any similar industry in the world. Large sums of money have been made by some individuals in it, but the business has been conducted in a reckless and wasteful manner in the past, which has resulted in depletion of the territory and unskillful anthracite coal mining, for which the public in the future will certainly have to pay, because there is no possibility of ever again producing anthracite coal at the costs which have obtained in the past.

Q. Do the meetings of these Temple Iron Company directors occur substantially each month except during vacation time in Summer? A. Oh, no. I do not recall that either the by-laws or our practice make any specific dates for meetings.

Q. Who is President of the Temple Iron Company? A. Mr. Baer.

Q. And you meet upon his call? A. Upon call of the Secretary. Whenever he wants a meeting, he calls the meeting together. There is an executive committee composed of the practical men, Mr. Warriner on the part of the Lehigh, Mr. Richards on the part of the Reading, and Mr. Loomis on the part of the Lackawanna, who manage

the physical portion of the business and the mining. They hold a monthly meeting and are paid for it, and they manage the properties.

(At 2 P. M. a recess was taken until 2.30 P. M.)

2.30 o'clock P. M.

Present—The Examiner. Messrs. McReynolds, Todd, Platt, Field, Moot, Schaperkotter, Seager.

WILLIAM H. TRUESDALE, having been duly sworn, was examined as follows:—

By MR. SEAGER:

Q. What is your business? A. I am President of the Delaware, Lackawanna and Western Railroad Company.

Q. And have been since when? A. March 1st, 1899.

Q. You came to the road then, after the acquisition by the Temple Iron Company of the properties formerly owned by Simpson & Watkins, or controlled by them? A. I think I did. I do not know just when those properties passed to the Temple Iron Company, but the negotiations for the purchase were all completed before I became connected with the Delaware, Lackawanna and Western.

Q. You know nothing of the negotiations leading up to the acquisition of those properties by the Temple Iron Company? A. I know personally nothing.

Q. Since the Temple Iron Company was organized, you have had knowledge of the operation of those properties? A. Generally, yes, sir.

Q. Has the Temple Iron Company had anything to do with the fixing of transportation charges on anthracite coal from the mines to tidewater or other points? A. No, sir, it has not.

Q. Since your connection with the company? A. It never has.

Q. Has it had any connection with the fixing of the selling price of coal in the markets throughout the country? A. It has not; it has sold all its output to the dif-

ferent companies who took its anthracite coal, delivered f. o. b. cars at the mines.

Q. Has the Temple Iron Company, so far as the D. L. & W. control of it is concerned, ever attempted to interfere in the matter of fixing the transportation charges or the selling price of coal? A. It has not.

Q. What was the inducing cause to the D. L. & W. to purchase an interest in that company? A. I was not familiar with the situation prior to the purchase of Simpson & Watkins' collieries by the Temple Iron Company, and do not know personally any of the conditions that existed, so far as the anthracite coal business was concerned, and I do not believe that I am competent to testify to the actual reason why they entered into that contract. That contract was negotiated prior to my connection with the road. It was submitted to the Board of Managers and they authorized its execution and directed me, as executive officer, to execute it, which I did.

Q. You knew that, prior to the negotiation of the Temple Iron Company purchase of the Simpson & Watkins collieries, that the D. L. & W. derived some of its coal tonnage from mines owned by Simpson & Watkins? A. I so understood, and one of the principal purposes of the contract was that it might continue to ——

Q. Enjoy that tonnage? A. Enjoy that tonnage, yes, sir.

Q. What was the result, after the acquisition of the properties of the Temple Iron Company, on the tonnage of the Lackawanna? A. So far as I know, I think it continued to produce, transport and sell practically the same tonnage as it did before, that is, the portion of it of certain mines that formerly were owned by Simpson & Watkins and were taken over by the Temple Iron Company.

Q. In other words, there was no substantial change in the tonnage transported over the D. L. & W. after the Temple Iron Company acquired it? A. That is my understanding.

Q. Since your connection with the Temple Iron Com-

pany, has there been any effort on the part of the directors of the company to limit the production of those collieries? A. I have no recollection of any such action ever being taken, and I do not think there has been.

Q. Has there been any effort to increase the production of those mines? A. Yes, I think there has. Most of the breakers have been modernized and equipped with better machinery to prepare coal, and I think the output of a number of them has been very greatly increased since the Temple Iron Company took them over.

Q. What is the transportation charge of the D. L. & W. from the coal regions to tidewater? A. I do not believe I can give that exactly. I do not believe I can give those charges exactly. On prepared sizes, I remember it is one dollar and fifty-eight cents per gross ton.

Q. That is what is known as the f. o. b. Hoboken rate? A. F. o. b. Hoboken.

Q. When did that f. o. b. rate go into force and effect? A. I believe some time in 1903. I could not state exactly from memory.

Q. What had the rate been prior to that time? A. I believe one dollar and sixty cents per gross ton.

Q. For how long a period? A. I cannot say. All the while from the time I became director of the road up to the time that change was made, that had been the case.

Q. And for how long prior to 1899? A. I do not know, but for a considerable period.

Q. Will you give the corresponding f. o. b. rates for Pea, Buckwheat, Rice and Barley from the coal regions to Hoboken? A. The rate for Pea coal is one dollar and forty-three cents per gross ton; for Buckwheat, one dollar and twenty-eight cents; Rice and Barley, one dollar and thirteen cents.

Q. What were the corresponding freight charges on Pea and sizes smaller prior to 1903? A. Pea coal, one dollar and forty-five cents per gross ton; for Buckwheat and smaller sizes, one dollar and thirty-five cents.

Q. Is there any understanding to-day between the D. L. & W. Railroad and any other carrier as to the maintenance

of any particular freight rate on anthracite coal? A. No, sir, there is not.

Q. Has there been since your connection with the company? A. No, sir; there has been no such agreement since my connection with the Lackawanna Railroad.

Q. Who fixes the rates on coal on the D. L. & W.? A. The officials of our Traffic Department, subject always to my approval.

Q. You make them independent of any other person, carrier or corporation? A. Entirely so.

Q. Who fixes the price of D. L. & W. coal at tidewater and other points? A. The officials of our Coal Department. Mr. Loomis is the Vice-President in charge of that department, and those prices are fixed subject at all times to my approval.

Q. And that has been true since your connection with the road? A. It has; yes, sir.

Q. Are those prices fixed independently of any other carrier? A. Entirely so.

Q. Or person or corporation? A. Yes, sir.

Q. It is charged in the complaint in this action that, together with other defendants named, the Delaware, Lackawanna and Western entered into and now maintains an agreement, combination, or conspiracy, to use its power as a carrier to obtain control of the sale and disposition of the output of independent mines in the markets of the several States, particularly in New York harbor; that is to say that the defendant carriers, either directly or through the instrumentality of their subsidiary companies "severally made with a large majority of the independent operators along their respective lines at divers times subsequent to 1892 substantially uniform contracts for a term ending in 1900." That was a part of the allegation. What have you to say as to that? A. There were no such agreements, either expressed or implied, that I know anything of, or to which our company is a party, nor has there been any since my connection with the road.

Q. Of the contracts existing, which the D. L. & W. has with the independent operators, so-called, how many have

been made since 1892? A. I could not tell that. I do not have in mind the date of the different contracts.

Q. Were the large majority of these independent operators along the line of the D. L. & W. under contract with the D. L. & W. for the sale of their coal subsequent to 1892? A. I cannot tell that. Those contracts are very old and were made at different dates. I do not know just what their dates were.

Q. Were these contracts for a term ending in 1900 which the Delaware, Lackawanna and Western had since 1892? A. No, sir. I think one of them ended that year.

Q. It is further alleged in the complaint that "Upon the termination of these contracts the said defendant carriers, either directly or through the instrumentality of their said subsidiary companies and agents, the defendant coal companies, in pursuance of a previous agreement between themselves, severally offered to make and did make and conclude with nearly all the independent operators along their lines new contracts containing substantially uniform provisions agreed upon before and by the defendant carriers in concert." Is that true as to the Delaware, Lackawanna and Western? A. No, sir; it is not.

Q. What is the fact? A. The fact of the matter is that most of the contracts the Delaware, Lackawanna and Western had in 1900 for the purchase of the coal of these defendant operators, a number of them at least, covered all the coal that would be mined from the collieries of the parties who made the contracts, and a number of them had provisions, as I remember, that, in case any more favorable terms were made for the purchase of coal from other independent operators, that such contracts would be amended and the parties making them with the Delaware, Lackawanna and Western Company should have equally favorable terms for the coal that they might thereafter sell. A few of the contracts that we have or have had, were made subsequent to the year 1900, when the sixty-five per cent. contract was negotiated..

Q. That is, of the contracts which we now have, we had prior to 1900 contracts with all but two? A. I think that is the case; yes, sir.

Q. And those are which ones? A. North End and one of the George F. Lee contracts.

Q. So that there is no occasion for the Delaware, Lackawanna and Western to enter into any new contracts with those people? A. There is no occasion to enter into them as a whole.

Q. How did it come that after 1900 the price paid to the independent operators was increased to sixty-five per cent. of the tidewater rate, where it had been sixty and fifty-five? A. That was done at their very urgent request, as the result of the increase in wages paid to the mine employes after the strike of 1900. A ten per cent. increase was paid in adjustment of the controversy to the mine laborers at that time, and the independent operators insisted that they could not afford to pay those increased wages and sell the coal on the basis of sixty per cent. of tidewater prices. It was after they had urged that very strongly on the different companies with whom they had the contracts, that the new sixty-five per cent. contract was negotiated and launched.

Q. Of course, when the price paid to one operator was increased to sixty-five per cent., under the provision of the contract providing that, in case other independent operators got more favorable terms, you would pay a like price to those under the contracts, the price went up automatically? A. It did. We could not avoid it. It was the fair thing anyhow to put them all on the same basis.

Q. What is the object of making contracts for the purchase of coal of these independent operators? A. It is to secure the transportation and merchandizing of the coal, and, as far as our company is concerned, to enable it to better supply the demands of its customers in the different markets where it merchandizes its supply of coal.

Q. Was there any idea on the part of the Delaware, Lackawanna and Western of monopolizing or controlling the production, transportation or selling of anthracite coal in making those contracts? A. I do not think that ever entered into the proposition at all.

Q. Have they had any such effect, so far as the operators along the Delaware, Lackawanna and Western are concerned? A. I do not think they have.

Q. Are there at present independent operators along the line of the Delaware, Lackawanna and Western Railroad selling their coal independently? A. A number of them, yes, sir.

Q. And the effect of entering into those contracts has not been to drive other independent operators into making those contracts with the Delaware, Lackawanna and Western? A. It does not seem to have had that effect. I have no knowledge of any such result.

Q. What is meant by Presidents' percentages? A. I do not believe I am familiar enough with that matter to give any explanation of it. It is something that was arranged long prior to my connection with the Lackawanna Road, which had nothing to do with our affairs since then, if it ever had.

Q. Did you ever enter into any agreement with any other person whereby the tonnage of the different coal carrying railroads was distributed according to certain arbitrary percentages? A. There was never such an agreement that I recollect of since my connection with the Lackawanna Railroad.

Q. Has there been any distribution of tonnage according to any percentage? A. There has not.

Q. Do you know what the alleged Presidents' percentages are? A. I know what is referred to by that.

Q. The Delaware, Lackawanna and Western's percentage, I believe, is said to be—— A. Thirteen and thirty-five one-hundredths per cent. under those old percentages.

Q. State whether or not the Delaware, Lackawanna and Western tonnage, since your connection with the railroad, has been maintained at about thirteen and thirty-five one-hundredths per cent.? A. No, sir. I think nearly every year we exceed that very much.

Q. State whether or not, since your connection with the Delaware, Lackawanna and Western Railroad, you

have produced all the coal that you could profitably sell? A. We certainly have, and most of the time we operate our collieries to the limit of their capacity.

Q. There have been periods when you have not done that? A. There have been occasional periods when we have not done that, of course; we did not during the two strikes of 1900 and 1902, and during the suspension brought about in the Spring of 1906.

Q. Otherwise you have produced anthracite coal up to your full capacity? A. As much as we could.

Q. And you have sold that coal at the best price you could obtain for it? A. We have.

Q. And generally at a price above that received by other carriers, other railroads, coal companies? A. I do not know that I am sufficiently informed as to what the other companies have secured to state that. I think, generally speaking, we have sold our coal on as high a basis of prices as any other company. Very rarely have we had to make any reductions from our established list prices.

Q. Have you ever, during your connection with the railroad, had any understanding or agreement as to maintaining the price at which coal should be sold at tidewater or anywhere else? A. We have not in any way, shape or form any agreements or understandings, either expressed or implied.

Q. The Lackawanna Railroad is a stockholder in the Lehigh Valley Railroad, is it not? A. Yes, sir, it has some holdings of Lehigh Valley stock.

Q. Why did the Railroad purchase that stock? A. I believe our Board thought at the time the stock was purchased, the company having some surplus funds to invest, that it was a good investment. I do not know of any other reason.

Q. That has been a good investment, has it not? A. It has proven so, yes, sir.

Q. And the purchase of that stock was not the result of any agreement, arrangement or combination with any other carrier or person? A. None whatever.

Q. Will you state whether or not the Lackawanna Railroad had anything to do, directly or indirectly, with the acquisition by the Erie Railroad of the New York, Susquehanna and Western? A. No, sir, it did not.

Q. Did the Delaware, Lackawanna and Western Railroad Company have any connection, direct or indirect, with the purchase by the Reading Company of the stock of the Central Railroad Company of New Jersey, in or about the month of January, 1901, or at any time? A. It had not then or at any time any interest whatever in that transaction.

Q. Did the Delaware, Lackawanna and Western Railroad Company or its officers, so far as you ever knew, have anything to do with that purchase of stock? A. It did not.

Q. Did the Delaware, Lackawanna and Western Railroad Company, or any of its officers or agents, have any connection with or anything to do with the acquisition by the Erie Railroad Company of the Pennsylvania Coal Company? A. They had not; had no interest whatever in the transaction.

Cross examination.

By MR. MCREYNOLDS:

Q. Prior to the time that you became the President of the Lackawanna Road, in 1899, what railroad were you connected with? A. The then Chicago, Rock Island and Pacific.

Q. You had nothing to do at any time prior to 1899 with any of these anthracite coal carrying railroads? A. No, sir.

Q. Since you have been the President of the Lackawanna Road, have you at all times been a member of the Board of Directors of the Temple Iron Company? A. I think practically so, yes, sir. There might have been a short period after my connection, immediately after my first connection with the Lackawanna Railroad, that I was not on the Temple Iron Company Board but

I was later; shortly after my coming into the Lackawanna Railroad, I became a member of that Board.

Q. What portion of the output of the mines controlled by the Temple Iron Company does the Lackawanna Railroad Company carry? A. I have not that in mind. I should say not more than eight or ten per cent.

Q. What proportion of the securities of the Temple Iron Company does the Lackawanna Railroad own? A. I do not know that I can tell you that. That is all in evidence.

Q. The portion it now holds is the same as that originally acquired? A. There has been no change in that.

Q. How often do you meet with the Board of Directors of the Temple Iron Company? A. It is very irregular. Aside from the annual meetings for the purpose of electing officers of the company, I do not think we have for some time had meetings more than twice a year, those being necessary in order to take certain formal action in the declaration of dividends, to provide for the payments of sinking fund requirements, and so forth.

Q. The presidents of all the anthracite coal carrying roads that hold stock in the Temple Iron Company are present at these meetings? A. Of all the anthracite coal companies?

Q. That have stock in the Temple Iron Company, I say. A. That I could not say. It may be, sir.

Q. What other gentleman meet there with you? A. I do not believe that I can give you the names of the Board. Mr. Baer is President and a member of the Board. Mr. Joseph Harris is a member; Mr. F. B. Underwood.

Q. The members of the Board are accustomed to meet upon call, are they not? A. Yes, sir. They are not always all present, however.

Q. What other meetings are attended by the presidents of these anthracite coal roads from time to time? A. I do not know of any. Of course, when special matters are up—we had a number this Spring, of course, in

connection with our negotiating our renewal of the contract with our miners. In 1906 we had a good many meetings at that time on the same subject.

Q. It seems from your testimony that the freight rate over the Lackawanna Railroad on coals from anthracite coal regions to New York harbor was changed in 1903? A. Yes, sir.

Q. Who changed it? A. That was changed by my direction.

Q. Before you made that change, did you have a consultation with the presidents of the other coal carrying roads? A. I did not.

Q. Why was the change made? A. The change was made to enable certain independent operators who were shipping over our line to have the benefit of as low rates as were being charged themselves and other shippers on the anthracite roads.

Q. Give us a little better explanation of that, please. That is not very intelligible to me. A. Certain of the independent operators, so-called, were shipping over our road and also over some of the other roads. Our rates, particularly on the smaller steam sizes, had been held on a higher basis than the rates of the other companies, and claims had been made against us, and one claim was in suit. As a result of settlement of those matters, we reduced our rates so as to put those independent operators on what they claimed was the same basis, and what we understood was the same basis, on which rates were being made by some of the other anthracite roads, particularly those having their terminals in the lower New York harbor here.

Q. Your rate on prepared sizes is one dollar and fifty-eight cents? A. F. o. b., yes, sir.

Q. And the rate on some of the other roads is one dollar and sixty cents? A. That I do not know. The rates on some of the other roads on prepared sizes to the docks in the lower harbor here was one dollar and fifty-five cents. Our rate was one dollar and sixty cents prior to this time, 1903. One of those independent operators,

who had been quite a large shipper over our road, claimed that he was discriminated against in that the difference in the water rates from the docks in the lower harbor and those from our docks nearly opposite the city, was really but three cents a ton. So we made our rates on that basis. They were charging one dollar and fifty-five cents per ton and we made ours one dollar and fifty-eight cents per ton at our docks.

Q. Your purpose being to equalize the water rates here at New York harbor? A. Equalize and put our shippers over our line on the same basis as was being charged them and other shippers on the other roads.

Q. And your purpose was to keep the difference between your rates and theirs just enough to meet the difference in the water rates? A. That was what they asked for and that was what we granted them.

Q. Who was that principal shipper? A. John C. Haddock. I do not know who was handling his business then, but he was the man that was interested in it.

Q. Was not Mr. Haddock's claim that, when you purchased coals on the sixty-five per cent. basis, the railroad got out of it thirty-five per cent. of the f. o. b. price and that, if you charged him any more than that, it was discrimination? A. I do not know what his claim was set up in the pleadings in his case. I do not know that I ever saw them. But when it came down to negotiating the settlement of his claim, it was settled on that basis. That is what he put up. That is what we adjusted the matter on, that basis.

Q. That is the way you settled whatever his claim was? A. Yes. I do not know what he set up in his pleadings.

Q. Do you control the prices at which coals are sold by your railroad? A. Do I personally control them?

Q. Yes. A. I did not mean that I personally fixed the price at which our coal is sold at all places where it is sold. In a general way I have knowledge and approval of what is done in that way. I do not personally undertake to make the prices.

Q. But they must all come to you for approval? A.

Not necessarily, I do not believe; the general policy of the company on those matters is, of course, probably determined by me, always subject to the review and control of our Board of Managers.

Q. Does your company issue monthly price circulars of the f. o. b. price of coal here at New York? A. My impression is they do. I am not sure about that.

Q. When was the last change in those circular prices? A. The first of this month, I think.

Q. That happens automatically every year, does it not? A. That is the basis on which we have marketed our coal for several years, yes.

Q. But when was the last general change in the circular price of coal which was to run until it moved again? A. I think that was right after the strike of 1902.

Q. Who fixed those prices? A. I think the officers of our Coal Sales Department, in consultation with me, did that.

Q. Whom did you consult with? A. I did not consult anybody.

Q. Did you not know that the other railroads were all going to have the same price? A. I think I had general knowledge of that.

Q. You and these other railroad Presidents all consulted about those prices? A. I do not know whether we had any special consultation on that matter. Of course, we had general knowledge of what each would do.

Q. How did you get that general knowledge? A. I do not know. There are various ways of getting it.

Q. You knew what the Reading was going to do? A. I think we did.

Q. And the Reading knew what you were going to do? A. Yes, sir.

Q. You knew what the Lehigh Valley was going to do, and so on with the other railroads that were concerned? A. It is not very different from the knowledge we all have as respect to freight rates.

Q. Your freight people meet together, when any

change is contemplated, and you consider amongst yourselves what shall be done? A. We generally do, yes, sir.

Q. And then, as the result of this conference amongst you, each man says what he is going to do and every other man does the same thing; is that right? A. Not always. We sometimes do not.

Q. If there is to be any material modification in these freight rates, you have another meeting, do you not? A. We might, or we might just give notice what we are going to do.

Q. But, as a rule, in your association you give notice that somebody wants a meeting and at that meeting he is going to present a change of rates? A. What do you mean by association?

Q. Do not your freight people meet together at stated periods? A. Yes, sir.

Q. If you want to make a change in freight rates, do you not give notice in advance that you are going to ask for a consideration of the matter? A. Yes, sir, at times; probably ordinarily that is done. At times rates are made and merely notice given to the others what we are going to do.

Q. But, as a rule, that matter is brought up in those meetings, and your railroad, for instance, says, "It is my purpose to put in a rate different from the one now existing," and that matter is threshed out in the meeting; is that right? A. I do not know to what extent it is threshed out.

Q. Your competitor says you ought or ought not to do it, and, if he persuades you, you withdraw it; is that right? A. That is done sometimes.

Q. And if he does not persuade you, you then change your rate. That is right, is it not? A. Yes.

Q. Now, then, these coal rates have been fixed in substantially the same way, have they? A. Well, somewhat the same way. There is no association, there is no organization, there is no one like a chairman or any one who can call a meeting.

Q. But there are not many and it is not hard to get you together? A. No.

Q. This last schedule of rates was fixed in 1902, as I understand you, and was fixed as the result of such a conference as you have described? A. I cannot state now whether there was any special conference held at that time on that subject.

Q. Everybody put out the same price at the same time? A. They did, yes, sir.

Q. And everybody has adhered to it ever since? A. I did not say that. I do not think they have.

Q. But the cuts have been very slight, have they not? A. That depends. At some places and at some times the cuts have been very radical. The mere fact of the circular being put out does not prove by any means that those prices are maintained by the people who put it out.

Q. Do you not feel that you should adhere substantially to your circular price? A. Not always, no, sir.

Q. You simply make long time contracts for small sizes? A. Well, and sell other sizes for less than the circular rates.

Q. You get information every month as to what your competitors are selling? A. I do not know as we get it every month. We get information as to a cut in rates most any time.

Q. You report to Mr. Ruley every month how much coal you sold and how much you got for it? A. Yes, sir.

Q. Your competitors report to Mr. Ruley how much coal they sold and what they got for it? A. At tidewater, yes, sir.

Q. Mr. Ruley makes up a statement and sends to you, so that you know from Mr. Ruley how much coal your competitors have sold and how much they got for it? A. No, sir.

Q. When did you cease to get those statements? A. We never got such statements.

Q. Then what statements does he send you? A. We get statements showing average prices, but there is no statement giving the quantities sold by each company.

Q. But the total quantities? A. I am not sure about that even. I do not believe he does. The average price

of all the coal sold in certain districts of different sizes is given by Mr. Ruley, but the quantities I do not believe I have ever seen.

Q. You do not think you get any quantities? A. No.

Q. These statements are sent in to you every month? A. We get them, yes, sir, every month.

Q. What do you send to Mr. Ruley? A. I am not familiar with that. I think all we send to him is the average we realize on the different sizes of coal, Broken, Egg, Stove, Nut, Pea, Buckwheat, Rice and Barley. I do not think he gets the quantities from us that we sell.

Q. What proportion of the coal that is sold at tidewater and which is brought here over the rails of your line, do you control, either by mining it or purchasing it under the sixty-five per cent. contracts? A. I should say roughly it must be ninety per cent.

Q. What is the relationship, if any, between the prices of coal at points along the line of your road and at tidewater? A. You mean how they compare?

Q. Yes. A. I do not believe I could give you that offhand. Generally speaking, I think our prices are not higher at points intermediate between tidewater and the mines than they are at tidewater. There may be some variation in some of the sizes of coal.

Q. Is the selling price of coal at line points, less the freight rate, more or less than the selling price at tidewater, less the freight rate? A. I think my previous reply covers that, does it not?

Q. If you adhere to it, perhaps so. A. In reply to the previous inquiry, I think I said that my understanding generally is that the price of coal at points intermediate between tidewater and the mines is maintained at prices not higher than tidewater prices.

Q. But I did not know whether to infer from that that you meant that the absolute selling price was not higher or whether you meant to allow for the difference in the freight rate? A. Of course, where the freight rates are lower, as they are near the mines, the price of the coal is less than at tidewater.

Q. Are you accurately advised about those things so you can tell? A. No, I am not.

Q. At the time the Lackawanna Railroad bought the stock in the Lehigh Valley Railroad Company, you were advised that other anthracite coal carriers were also buying stock in that same company? A. Yes, sir.

Q. Through whom did you buy that stock? A. Through J. P. Morgan & Co., I believe.

Q. Were you advised also that the Lake Shore Railroad Company was the purchaser of a large block at the same time? A. I think so. I am not sure. I knew the Lake Shore Company bought that.

Q. Did you all pay the same price? A. That is my understanding.

Q. Does the Lackawanna deal in bituminous coal at all? A. No, sir.

Q. Have you knowledge of an arrangement under which the Lackawanna Company formerly brought coals to tidewater and settled with the shippers on the basis of forty per cent. of the tidewater price for its freight? A. I know of no such transaction.

Q. You know of no such dealing between the railroad company and the shippers of coal? A. No, sir. I know of no arrangement by which the Lackawanna ever transported coal for a freight rate based on forty per cent. of the tidewater price.

Q. Was there an arrangement under which they collected the flat rate and then had some sort of a settlement? A. I know of none; never heard of any such.

Q. In your statements of your coal department is there anything entered for depreciation in the value of your coal lands? A. I think so, yes, sir.

Q. How much? A. There are no definite sums.

Q. No particular sum per ton of coal? A. No, sir.

Q. Under what item does that appear? Can you tell us? A. The general cost; it is included in the total cost of coal, cost of mining.

Q. Relatively speaking, are the mines owned by the Lackawanna Railroad Company expensive to mine or

otherwise, relative to other mines in the section? A. I think in that particular section they relatively compare very closely with other mines. Taking the anthracite region as a whole, I think the mines in the district where our mines are chiefly located are rather more favorably situated for mining than the others.

Q. Your company controls some of the mines regarded as the best and the cheapest to operate of any in the coal region? A. Yes, sir, that is so.

Re-direct examination.

By MR. PLATT:

Q. In 1902, your railroad and all of the producers of anthracite coal had a serious disagreement with your miners, did you not? A. We did; yes, sir.

Q. And it was a disagreement as to the prices they were to be paid for labor in mining? A. Yes, sir, it was.

Q. And it applied to all the different kinds of mine labor? A. All classes, yes, sir.

Q. That was led by Mr. John Mitchell, who was at the head of unions of miners? A. It was.

Q. It resulted in a strike and a shutting down of the mines, did it not? A. Yes, sir.

Q. That was of all the mines in the region? A. Affected all the mines in the anthracite region.

Q. And it continued during the whole summer? A. From about the 1st of April until the middle of October, as I remember it.

Q. Along about the middle of October, 1902, did you join with Mr. George F. Baer, the President of the Philadelphia and Reading Coal and Iron Company, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company, Mr. E. B. Thomas, chairman of the Pennsylvania Coal Company and the Hillside Coal and Iron Company, Mr. T. P. Fowler, President of the Scranton Coal Company and Elk Hill Coal and Iron Company, Mr. R. M. Olyphant, President of the Delaware and Hudson Company, and Mr. Alfred Walter, President of the Le-

high Valley Coal Company, in a communication to Mr. Theodore Roosevelt, asking him to name some people to intervene and settle that dispute? A. We did.

Q. Did Mr. John Mitchell also address a similar communication to Mr. Theodore Roosevelt? A. As I remember, he did, yes, sir.

Q. In that communication did you and the other gentlemen agree that you would abide by the decision of that so-called Commission, if it should be appointed by Mr. Roosevelt? A. We did.

Q. Did the President appoint that Commission? A. He did.

Q. And that was the Commission of which Mr. George Gray was the head? A. Chairman, yes, sir.

Q. In the conference before that Commission, were the different companies that I have named represented by counsel? A. They were.

Q. And was the Delaware, Lackawanna and Western Railroad represented by counsel? A. It was, yes, sir.

Q. Did that result in a finding by that Commission, or a decision? A. It did.

Q. Did that increase the rate of wages? A. Very substantially, yes, sir.

Q. Did that result in an enhancement in the price of coal to the consumers? A. Yes, sir.

Q. It increased the price of prepared sizes of coal about fifty cents, did it not, to consumers throughout the country, approximately? A. Yes, sir.

Q. When you entered into that combination with Mr. Roosevelt, was there any proceeding brought against you by Attorney-General Bonaparte, or whoever was Attorney-General of the United States at that time? A. I do not remember of any.

Q. Did you ever hear it suggested that there should be a prosecution for that combination which enhanced the price of coal, with Mr. Theodore Roosevelt? A. I did not.

Q. Do you know of any law under which that so-called Commission was appointed? A. I do not. I do not think it was ever claimed there was one.

Q. Has the Lackawanna Railroad any agreement or arrangement or understanding with the Lehigh Valley Railroad Company about rates of transportation of any kind? A. It has not.

Q. Has it any agreement or understanding or arrangement with the Lehigh Valley by which prices of coal are fixed? A. It has not.

Q. Or with any other railroad? A. It has not.

Q. Or with any other Coal Company? A. No, sir, it has not.

Q. Have you any agreement with the Lehigh Valley or with any other railroad or coal company which forbids the Lackawanna from selling its coal at any price that it sees fit? A. There is no agreement in effect, nor has there been since my connection with the company.

Q. Has it any agreement with the Lehigh Valley Railroad Company or Lehigh Valley Coal Company which would forbid you from fixing the rate at any time as you saw fit, and as you thought was for the benefit of the Lackawanna Road, or with any other railroad or coal company? A. There is no agreement of that kind.

Q. I understand you to say that the Lackawanna rate to tidewater on prepared sizes was changed from one dollar and sixty cents to one dollar and fifty-eight cents. When was that? A. I think that was 1903 or 1904.

Q. Before you made that change, did you ask permission from any other railroad company? A. No, sir. We did not consult with anybody.

Q. You did that simply because you thought it was for the interest of the Lackawanna and proper for it to do so? A. We did.

Q. Did you ever know of any officer of the Lehigh Valley Railroad Company or any of the other railroad companies claiming that you did not have that right? A. No, sir, never had a protest.

Q. No one ever undertook to say that you should not do it? A. No, sir.

Q. And, if they had, would it have made any difference to you? A. No, sir, it would not.

Q. It has been put in evidence here that the Lackawanna Company makes monthly two kinds of reports to Mr. Ruley, one relating to the prices at which it sells its tidewater coal and the other a statement of its shipments, all shipments of coal which go over it as an initial road, and that Mr. Ruley makes up from the reports of that character which are furnished by your company and by other shippers and operators, two sets of monthly reports, one showing the average tidewater price and the other showing the shipments over each carrier and the total shipments. Does your company make up and report to him this latter kind, that is, the shipments, and does it receive from him reports of all the shipments? A. That is, the total shipments to all points, to all markets?

Q. Total shipments over the road, yes. A. Yes, sir; I think that includes also the anthracite coal we burn. That is my understanding of it.

Q. But there is such a report, whatever its exact character may be, coming to you from Mr. Ruley every month? A. There is.

Q. Whatever the reports may be on tonnage, do they come to you in pursuance of any agreement with the Lehigh Valley Company or any officers of the Lehigh Valley or in pursuance of any agreement with other companies? A. I do not so understand; no, sir.

Q. Do you use those to guide your conduct, or any agreement that you have entered into with any of these other companies? A. We do not.

Q. For a time, according to the testimony, it appeared in these reports that there were columns showing Presidents' percentages and what would have been the tonnage under Presidents' Percentages and what were the actual tonnages and actual percentages. When those reports came to you in that form, as they did from 1901 to 1903, according to the testimony, did you ever use those reports to guide you in restricting the output or in restricting the tonnage over your road? A, We did not. They had no bearing whatever on our conduct of our mining operations.

Q. Or your transportation? A. Or transportation or sale of coal.

Q. As far as they were furnished, they simply furnished statistics which were useful to you in your business and they were never used by you, as I understand, for the purpose of controlling your conduct or your transportation in any way? A. That is correct.

Re-cross examination.

By MR. MCREYNOLDS:

Q. You have had occasion, from time to time, to expostulate with your competitors for selling below their published prices here at tidewater? A. I do not know that I have. No doubt some of our people have.

Q. You have ascertained from time to time what you thought was being the case, that they were not living up to their schedule rates? A. I think at different times we have felt that.

Q. What course did you take with reference to that? A. I do not know. If we felt it desirable to do so, we might have protested to them.

Q. Have you not protested, as a matter of fact? A. I do not know that there has been any special occasion that that has been done, but I suppose it has.

Q. That is the course you pursued if you did ascertain that, is it not? A. It is not any different from what anyone in the merchandise business might do.

Q. You would feel at liberty to go to any of your coal operators and protest that he was not selling his coal according to his schedule prices, if you ascertained he was not, would you? A. We would.

Q. And you would feel that he was doing you a wrong? A. I do not know about that. He would probably put it on the basis that he was doing himself a wrong, selling the coal for less than he needed to.

Q. And you would expect him to change it when you brought it to his attention? A. Not necessarily.

Q. Not necessarily, but what would you expect?
(Objected to by Judge Moot.)
Q. What would you expect him to do?
(Objection renewed.)

A. I do not think we would have any expectation on that matter at all. In point of fact, there has been no agreement whatever that anyone could enforce, legal, moral or otherwise, as to the price of coal.

Q. You might do so, might you not? A. In order that a man might not demoralize the market, yes; but I have no memory when that was done particularly.

Re-direct examination.

By MR. SEAGER:

Q. The form your protest would take would be to propose to meet his prices? A. It might or might not, according to whether we thought it wise to do so.

By MR. PLATT:

Q. Would you claim any right to protest under any agreement or understanding? A. No, sir; none whatever.

Q. When you use the word "protest," you mean just as any merchant might go to another merchant and say to him, "What is the use of your cutting prices, when you just make us all reduce prices and so lose money?" Is that about all? A. That is all there is to it, sir. That was all there was to it.

Q. The word "protest" might imply that you had a right to tell him that he ought not to reduce his price; do you mean to say that? A. No; of course not.

Q. In other words, Mr. McReynolds' use of the word "expostulate" would be more nearly correct, would it not? A. It probably would.

DAVID BOSMAN, recalled.

By JUDGE MOOT:

Q. On page 138 of the Laws of 1898 of the State of New Jersey, I find a law which provides: "Consent is hereby given to the New York, Susquehanna and Western Railroad Company to lease its franchises, railroad and property to the Erie Railroad Company, a railroad corporation of the State of New York, for such time and upon the terms and conditions agreed upon between the said companies, upon condition, however, that such lease shall have been approved by the stockholders of two-thirds in amount of the stock of the said New York, Susquehanna and Western Railroad Company, by approval given either in writing or at a meeting of the stockholders by vote, or with like approval, to unite, consolidate or merge the whole or any part of its stock, property, franchises or railroad with that of the Erie Railroad Company, or to do any or all of such acts." Under that Act of the Legislature of the State of New Jersey, approved April 2d, 1898, did the stockholders holding two-thirds of the capital stock of the company consent to the lease of the New York, Susquehanna and Western Railroad Company to the Erie Railroad Company? A. They did.

Q. On what date? A. March 11th, 1898.

Q. Was a lease of the New York, Susquehanna and Western Railroad Company, pursuant to that Act of the Legislature and the consent of the stockholders as provided for in it, afterwards made by the New York, Susquehanna and Western Railroad Company to the Erie Railroad Company? A. Yes, sir.

Q. Is this lease which I show you, dated February 24th, 1898, but acknowledged March 11th, 1898, a copy of that lease? A. Yes, sir.

(Judge Moot offers the lease in evidence. Marked "Erie Exhibit No. 42, 6-30-09.")

Cross examination.

By MR. MCREYNOLDS:

Q. What is your connection with the New York, Susquehanna and Western? A. I am Secretary.

Q. For how long? A. For five years Secretary.

Q. You know nothing about these transactions personally, of which you have been speaking? A. Not personally.

Q. These writings you have produced here you have gotten from what source? A. From the records of the company.

Q. This lease that was purported to be made to the Erie Railroad Company was dated in February, 1898, was it not? A. Yes, sir, dated February, acknowledged March 11th.

Q. What date have you? A. February 24th.

Q. When did the Erie Railroad acquire two-thirds of the stock of the New York, Susquehanna and Western? A. I do not know what date in 1898, but in 1898.

Q. Here is a paper which seems to be a copy of the approval and assent of the stockholders, which I believe you say ought to be dated March 11th, 1898, which reads as follows: "To F. P. Moore, Esq., Secretary New York, Susquehanna and Western Railroad. The Erie Railroad Company, being the record holder and the owner of stock of the New York, Susquehanna and Western Railroad Company to the following amounts, to wit, 83,996 shares of the preferred stock and 100,246 shares of the common stock, being more than two-thirds of all the capital stock of said company, hereby expressly approves and assents to the lease of the Railroad of the said, the New York, Susquehanna and Western Railroad Company, to the Erie Railroad, as set forth in the instrument dated February 24, 1898, and does hereby authorize and request you so to certify under this date. (Signed) Erie Railroad Company, by G. M. Cumming, First Vice-President." Does that appear on the records of the New York, Susquehanna and Western Railroad A. That is a copy of

the paper on record, among the records of the Susquehanna and Western.

Q. Is that all you know about that particular transaction? A. Personally.

Q. How long did this lease of the New York, Susquehanna and Western to the Erie continue in existence? A. I do not recall.

Q. Can you give us an idea? A. No.

Q. Only a few months, did it not? A. No, I would not say that.

Q. What would you say? A. I do not recall.

Q. When did the Erie take over the New York, Susquehanna and Western and issue its own stock for it? A. During 1898, I think.

Q. The lease stopped then, did it not? A. I do not recall it, whether it did or not.

Q. You cannot recall it because you had nothing to do with it, did you? A. As a matter of information, or matter of record, I looked it over; but I do not recall just what the record shows.

Q. But you do know that the Erie acquired the New York, Susquehanna and Western by issuing its stock for it during the year 1898? A. Yes, sir.

Q. And since that time the Erie has been operating the road? A. No, sir.

Q. Who operates it? A. The Susquehanna and Western operates it.

Q. Since 1898 the Susquehanna and Western has been operating its own road? A. Yes, sir.

Q. Right straight along? A. I do not know whether from 1898 or not, but the Susquehanna and Western has been operating its own road, yes.

Q. For how long? A. I do not know.

Q. It has its own officers? A. It has its own officers.

Q. Its own schedules of freights and all that? A. Yes, sir.

Q. You do not know how long that has been going on, though? A. Not for a certainty, no.

Re-direct examination.

By JUDGE MOOT:

Q. The consents under which this lease was executed, dated March 11th, showing the amount the Erie Railroad Company itself had and showing the amount of stock outstanding and all that, appear in this lease on pages 12 and 13, the lease having been made an Exhibit, that is, a copy of it? A. Yes, sir.

By MR. MCREYNOLDS:

Q. Can you ascertain and put in this record when that lease was given up and when the New York, Susquehanna and Western began to operate its own system? A. I will endeavor to do so, yes, sir. It happened

(Judge Moot offered in evidence Philadelphia and Reading and Erie Exhibit No. 41, for identification, June 16th, 1909, being a theoretical section of Packer No. 5 Colliery.)

Judge Moot stated that the Erie and the New York, Susquehanna and Western close their evidence at this point.

Judge Moot states by request for the Temple Iron Company that it reserves the right to offer further evidence if it shall be so advised to do by Major Warren when his condition of health permits him to act as counsel for it again.

Judge Moot also states for the Reading Company that, for personal reasons not put upon the record, Mr. Baer is not able to be examined now, he having sailed for Europe, and will give his testimony when he returns in September.

Mr. McReynolds states that the Government does not assent to any of the reservations stated above. If any further testimony is to be taken in behalf of defendants, it must be done either by some arrangement satisfactory to Government counsel or by an order of the court.

Mr. Platt states that the Lehigh Valley closes its case.

By the assent of all parties, it is agreed that the Government may take its testimony in rebuttal at such time in September as it may select, notice being given by the Examiner to all parties in advance.

Judge Moot states that the Temple Iron Company and the Reading Companies, for whom he has no right to speak, are not to be deemed parties to this agreement.

Adjourned.

Met pursuant to notice, Monday, September 27th, 1909, at 10.30 A. M., at the Post Office Building, Philadelphia, Pa.

Present—The Examiner.

Counsel Present—Messrs. McReynolds, Todd, Campbell, Moot and Warren.

GEORGE F. BAER, having been duly sworn, was examined as follows:—

By JUDGE CAMPBELL:

Q. You are president of the defendants, the Reading Company, Philadelphia and Reading Railway Company, Philadelphia and Reading Coal and Iron Company, the Central Railroad Company of New Jersey, the Lehigh and Wilkes-Barre Coal Company and the Temple Iron Company? A. I am.

Q. You are a lawyer? A. I was, and I suppose I am still.

Q. Prior to 1870 and subsequently you were a practicing lawyer? A. Yes.

Q. Were you professionally connected with the Philadelphia and Reading Railroad Company in times past? A. My connection with the old Reading Railroad Company began in 1870. I was first employed as counsel in Berks County and then gradually I became one of the counsel who was called in confidentially under the Gowen

administration, and when Mr. Corbin became president, I became a director and continued to serve as one of the counsel. I was on the executive committee during the Corbin administration. When Mr. McLeod became president, I resigned as a director and ceased to have any relation with the administration other than as local counsel and counsel designated at times to try particular cases; what I mean by that, I no longer sustained any confidential relation to the management of the railroad. After the receive ship in 1893, I was again called in as advisory counsel to the receivers and became a director again, I think in the election of 1893 or 1894, I do not remember which, and I continued in that relation until April 1901, when I was made president of the reorganized companies.

Q. Do you recall, shortly after 1870, within a few years, the organization of the Philadelphia and Reading Coal and Iron Company? A. Yes; a special charter was obtained, I think in 1871, under which the Coal and Iron Company was organized.

Q. You were not only associated and related, as I understand, to these managements to which you have referred, as counsel properly in respect to legal matters, but also as an advisor in relation to other business and economic matters? A. During the administrations of Mr. Gowen, Mr. Keim, Mr. Corbin and Mr. Harris, my relations were intimate and close and I was generally consulted about every important business matter, as well as legal matters.

Q. Do you recall the three receiverships which are shown in this record, the one beginning in 1881 and continuing for a year or so; another beginning in 1884, probably, and continuing until about January, 1888; and the other beginning in 1893 and continuing, so far as the conduct of the business operations of the company were concerned, until the first day of December, 1896? A. Yes.

Q. You were also in consultation as to legal matters and business matters during these several receiverships with the receivers, were you not? A. Yes.

Q. In the same way as you had been with the management of the corporations under their presidents? A. Yes.

Q. Were you familiar and are you familiar also with the proceedings which led up to and formed the organizations of the Reading Company, the Philadelphia and Reading Railway Company and the Philadelphia and Reading Coal and Iron Company in respect of their taking over the assets and properties and leased lines of railroad, and other things which were formerly of the Philadelphia and Reading Railroad Company? A. I was one of the counsel and familiar with the whole reorganization scheme. In fact, most of the details of that scheme were committed to me. After consultation with counsel, Mr. John Johnson, Mr. Stetson and Mr. Dickson and other gentlemen, generally they managed to throw the detail work on me to a very large extent, so that I was engaged in nothing else for a long while except working on the reorganization plan and getting up the details of them, and I am thoroughly familiar with the whole matter.

Q. Are you acquainted with the affirmative allegations, and so forth, contained in the Government petition in this suit? A. I have read them over very carefully several times, and of course I have seen the answers, which were submitted to me—I mean the answers of my companies—and they accurately state the facts as I know them to be.

Q. Both in respect to the denials of affirmative allegations in the petition and in respect of affirmative allegations set up in these answers in response to the allegations of the petition? A. Yes.

Q. There are but a few of the allegations contained in the Government's petition that I care to call your attention more particularly to at this time; but there are some in regard to which I would like to have you go into some detail. A. If you will call my attention to them, I will do so.

JUDGE CAMPBELL:—I wish to state at this point that I do not propose to examine Mr. Baer in respect to the

issues connected with the Temple Iron Company, but will defer whatever examination may be desired in regard to that company and its relations, to other counsel, counsel of record for the Temple Iron Company.

MR. MCREYNOLDS:—That will, however, be at this meeting?

JUDGE CAMPBELL:—Yes; I merely waive that part as to my own examination.

By JUDGE CAMPBELL:

Q. The general purport, intendment and effect of this first paragraph of the Government's petition, which is really introductory in its nature, is to create the impression that all of these defendants are connected with, and conduct their operations in relation to, the entire anthracite region. The detailed evidence already in the record shows that that inference is not to be sustained; but I would like to ask you particularly whether the lines of railroad of the defendant, Philadelphia and Reading Railway Company have any access to the anthracite territory commonly known as the Lehigh, Wyoming and Lackawanna Regions? A. The Philadelphia and Reading Railway Company, as you can see by the map, does not extend into the Wyoming Region, which is the name we generally give to the Upper Region, which includes the Lackawanna. It only in a limited way reaches what is called the Lehigh Region. I believe the outline is a little close there, but we have no active lines in the Lehigh and none whatever in the Wyoming Region.

Q. In the Lackawanna? A. We call that the Wyoming.

Q. In the Government petition they are grouped together. A. I do not know what you lawyers do, but technically the Upper Region is called the Wyoming Region, the middle district is called the Lehigh and the Lower Region is called the Schuylkill for convenience, because in the Government reports and statistics that is the subdivision made, and I wish you lawyers would accommodate yourselves to that. It simplifies the examination if you bear that in mind.

Q. In the sense of competition for traffic, then, is the Philadelphia and Reading Railway Company or not a competitor for the carriage of the coal which originates in the Northern, or Upper, and Middle Regions? A. No. We are not competitors in either of those regions.

Q. Now as to the defendant, the Philadelphia and Reading Coal and Iron Company; has it any operations, either in times past or now, or contemplated in the future, in the Upper or Northern and Middle or Lehigh Regions? A. No; its holdings are confined entirely to what we know as the Schuylkill Region.

Q. In the second paragraph of the Government's petition it is stated that "in the absence of the restraints imposed by the unlawful contracts and combinations hereinafter charged and described, they," that is to say, the substantial defendants named in the petition, "would be active competitors in the transportation of anthracite coal from the mines to the tidewater markets." Is that allegation true? A. No; that is not correct.

Q. In the latter clause of the second paragraph of the Government's petition, there is a table presented of the exact percentages of anthracite coal carried by the various parties named, in connection with the allegation that "in the year 1905 the total tonnage of anthracite coal transported from the mines was divided among the several railroads in the following proportion." Was there ever at any time, or is there now, anything in the nature of a division agreed upon or participated in by these defendants, of the tonnage carried by them? A. None whatever. There is absolutely no division of coal tonnage and has not been to my knowledge during the period since my active connection with the systems. During my administration, of which I can speak absolutely, there never was any division or attempted division of coal tonnage. We mine and market all the coal we can, without regard to what other companies are doing. It is as free and open a market, so far as that goes, as exists in any commodity in the world.

Q. There is a sort of legal conclusion involved in the closing part of the third paragraph of the Government's

petition, to the effect that the defendant carriers and the subsidiary defendant coal companies which they control respectively, or which are controlled in their interest, are, for all practical purposes, one and the same—in other words, identical. I think your opinion on the record is as good as that of the draftsmen of this petition. I would like to have you say something as to that question of identity. A. Neither actually nor legally is that true.

Q. The pleader in his petition has cited the opinion of the Supreme Court of the United States in Interstate Commerce Commission *vs.* Baird and others, decided April 4th, 1904, as supporting that suggestion. I would like to introduce in evidence at this point, to meet this method of pleading, another opinion of the Supreme Court of the United States bearing upon that point, with which you are familiar. A. Of course, the Commodities Case is familiar to you all and has probably made the distinction that was not in the mind of the pleader at the time he drew this petition. I do not think it is necessary to discuss the legal questions involved.

Q. Omitting all these other allegations in the petition, which are in their nature preliminary and introductory, I call your attention to the allegations contained in paragraph seven of the Government's petition, which present what are supposed to be the real matters in controversy here. In the first place, I desire to quote from the introductory portion of paragraph seven the following: that defendants, Reading Company and carriers and the defendant coal companies "entered into an agreement, scheme, combination or conspiracy, by virtue whereof they acquired the power to control, regulate, restrain and monopolize, and have controlled, regulated, restrained and monopolized, not only the production of anthracite coal, but its transportation from the mines in Pennsylvania to market points in other States and its price and sale throughout the several States, with the result that competition in the transportation and sale of anthracite coal has been wholly suppressed and the price thereof to consumers greatly enhanced." Now, before going into your examination in respect of the several specifi-

cations, which are supposed to support that allegation, I would like to have you state exactly what combinations, agreements, schemes, or conspiracies have been participated in by the defendants, the Reading Company, the Philadelphia and Reading Coal and Iron Company, the Philadelphia and Reading Railway Company, either for the purposes mentioned or for any others? A. There never has been any combination, or agreement, or scheme, or conspiracy whatever of that kind at all. I see, by looking at your pleadings, that in paragraph *a*, a reference is made to the sixty-five per cent. contracts. The custom of the coal companies was, for a long period of years, to make contracts with the individual operators, whose outputs were small, to sell their coal for them. The cost of selling coal to an individual is necessarily large. He must keep offices in different cities and different places, and it involved a very heavy expense for a small output; so that gradually the individual operators found it to their advantage to sell their coal on the percentage basis to the coal companies, and they thought it was profitable to do so. I was not in touch with the details of those contracts up to 1890. I knew only in a general way that the contract was sixty per cent. at about that time, based upon sixty per cent. of the f. o. b. selling price in New York. In 1900, in the midst of that strike, after our friends in New York had forced us to accept a proposition to advance wages ten per cent., the individual operators refused to join in the advance and we had long negotiations ——

By MR. MCREYNOLDS:

Q. Who do you mean by "We"? A. The coal presidents and the anthracite people interested in the strike, and some of the individual operators were with us; that we had a committee—I do not remember who it was—representing the negotiations, you know, with Hanna and with the miners' organization; and, afterwards Thomas and Truesdale and myself, representing the Reading at that time, although I was not president at that time ——

By JUDGE CAMPBELL:

Q. You were a member of the Executive Committee?

A. I was on the Executive Committee, and I was asked to take charge of that.

Q. On behalf of the Philadelphia and Reading Coal and Iron Company? A. On behalf of the Philadelphia and Reading Coal and Iron Company, on whose Executive Committee I was. Mitchell would not call off the strike unless these individual operators put up notices, which Hanna and he had prepared, which amounted to an agreement to advance wages ten per cent., unless these operators got a better price for their coal. They said they could not afford to do it, and finally we had a conference at the Erie office with them. They appointed a committee, and, after a long negotiation, they agreed to put up these notices if the advance was made to sixty-five per cent., and then we agreed to do that, provided they would agree to appoint a committee to take up the whole subject of the preparation of coal and a number of details connected with such an advance. They appointed a committee and we appointed a committee, and then they called a further meeting of independent operators and put up the notices. It would be an interesting political history; I have all the telegrams from the distinguished chairmen of the Republican Committee on that subject, but I do not think it would be advisable to put them in the record unless they are desired. Then the committee was appointed, they put up the notices, and the strike ended, and we sat for three or four months here in Philadelphia trying to work out the problem. The great contention was between the coal companies and the individual operators as to the exactions of preparation. They did not want the inspection to be so rigid. They thought that the quantity of slate we minimized too much. They thought some of the sizes should be done away with. We had a long and a very serious time, until finally we agreed to recommend to the different companies a form of agreement, and that is now known as the sixty-five per cent. agreement. It was optional to any of the independent operators, or any of them, to accept it or not. Some of them did and quite a number did not. I think we have now only three or four.

Q. About five, I think the record shows. A. This spring, Thorne's company—the Buck Mountain people—came and said they did not want to work under that contract, and I said all right and released them. We do not care anything about it. If they do not see fit, those contracts are no especial advantage to us. It is really for the benefit of the independent operator, for the reason I gave you, that he gets his money certain for the sale of his coal, he has no expense in marketing it, he need not store his coal and he runs no risk in the solvency of the buyer. All those things the companies take upon themselves and, so far as my companies are concerned, we are perfectly willing that they shall cancel these contracts at any time. We do not care anything about them, and I have never refused any offer to cancel the contracts.

Q. To get to the precise terminology of these allegations, I read that the charge is that these contracts were entered into "in order to prevent the output of the independent mines from being sold throughout the several States in competition with the output of their own mines or the mines of their subsidiary coal companies." A. I never heard of any such proposition except in the newspapers and in the Government petitions. Among coal men we never heard of any such thing.

Q. Was that motive or purpose considered by anybody? A. I never heard of it.

Q. Was it suggested by anybody at any time? A. I never heard of it.

Q. In this connection, is it true, as charged, that these parties "entered into and now maintain an agreement combination or conspiracy to use their power as such carriers to obtain control of the sale and disposition of the aforesaid output of the independent mines in the markets of the several States"? A. No; it is not true. My former answer explains that.

Q. Did this company, the Philadelphia and Reading Coal and Iron Company, the Railroad Company or the Reading Company, ever undertake in any way, shape, manner or form, to force, or even induce, any independ-

ent operator to enter into a sixty-five per cent. contract? A. No; we never requested any of them to do it, never urged them, and were indifferent as to whether they did it or not. The contracts were entered into voluntarily by these people, and it was then, is now, ever has been and I think ever will be, a matter of indifference to the Coal and Iron Company as to whether they enter into these contracts or cancel them.

Q. There is just one other corollary to these charges which I desire to meet. Did the Philadelphia and Reading Coal and Iron Company, or the Philadelphia and Reading Railway Company, or the Reading Company, have any understanding or agreement that the other companies should use the power of the carriers or their situation to force their individual operators into the execution of these contracts? A. Certainly not.

Q. Nothing of the kind ever transpired? A Certainly not.

Q. At Judge Moot's suggestion, I inquire whether you can speak for the Central Railroad Company of New Jersey, and the Lehigh and Wilkes-Barre Coal Company in respect of their motives, purposes and conduct in relation to those matters in the same way? A. I make the same answer as to them that I do as to the Reading, as representing both of those companies. Nothing of the kind ever took place. They never made any effort, and are indifferent as to whether these independent operators work under the sixty-five per cent. contracts, or whether they mine and sell their own coal.

Q. In answer to my previous questions you confined the description of your relations to the Reading companies proper. How long have you been officially connected with the Central Railroad Company of New Jersey and the Lehigh and Wilkes-Barre Coal Company? A. Mr. Maxwell did not resign, I think, until ——

Q. Was it two or three months after you became president of the Reading? A. The annual election of the New Jersey Central is in September; it was on last Friday. I do not remember whether Mr. Maxwell resigned before

the annual election or whether I went in at the annual election in September; but I recall that he served as president for three or four months after I took the presidency of the Reading companies; but the date I do not recall.

Q. While it is already covered by your answers, I desire to refer to another paragraph of this petition, in which it is asserted that pursuant to this alleged combination, agreement and conspiracy, purchase contracts were entered into with all or nearly all the individual operators; is that true with regard to the Philadelphia and Reading Coal and Iron Company? A. No; it is not correct. I think you have a statement from one of our officers giving the exact number of individual operators on our line and also the Central.

Q. I do not intend to burden your answers with the details of that, but is it not true, as a fact, that contracts were entered into with all or nearly all of the individual operators on your lines? A. No, sir; it is not true, nor on the lines of the Jersey Central.

Q. It is charged that it was the purpose of these sixty-five per cent. contracts to fix the price to be paid, in these words: "Fixed the said percentages to be paid by them or their coal companies under said contracts at a point that bore such a relation to the published rates of transportation, that, taking for a basis the average tidewater price of anthracite when the contracts were made and during many years previous (barring strike period), the independent operator who entered into one of these contracts realized upon his coal from fifteen to fifty cents more a ton, approximately (depending upon the length of the haul and variations in the tidewater price), than was realized by the independent operator who shipped his coal to tidewater on his own account, paying the published rates of transportation himself, and sold it there in competition with the coal of the defendant carriers and their coal companies, which difference or advantage represents the amount per ton that the defendant carriers or their coal companies paid for the privilege of controlling

the sale and disposition of the independent output so as to prevent it from selling in competition with the output of their own mines, as aforesaid. The result of this arrangement, as was intended, was to draw, if not to force, the great majority of the independent operators into making the aforesaid contracts, thereby enabling the defendant carriers and their subsidiary companies, the defendant coal companies, to control absolutely and until the mines are exhausted, the output of most of the independent anthracite mines, and to prevent it, as aforesaid, from being sold in competition with the output of their own mines in the markets of the several States, particularly in the great tidewater markets." Is that allegation true? A. No; it is not correct at all. All the operators could have accepted those contracts if they wanted to, and the fact that they did not accept them shows that they must have been making a greater profit by not accepting them than otherwise they would make. Probably they have facilities for marketing their coal which they considered better than ours.

Q. I call your attention to the testimony of one of the witnesses here, Mr. Sturges, who operates the Pine Hill Colliery in the Schuylkill Region, from lands partly owned by the Philadelphia and Reading Coal and Iron Company and partly by the Susquehanna Coal Company, or some affiliated company of that company, and partly independently by himself, that he sells his coal, a large proportion of the coal produced from his own individual lands, independently of the coal contracts, and that he gets better prices for the coal he sells himself in that way than he does from the coal he sells to your Coal and Iron Company or to the Susquehanna Coal Company? A. Of course, I would not know anything about that; but I would assume that would likely be the fact, otherwise he would have tried to make a sixty-five per cent. contract.

Q. Mr. Kemmerer, who was of the firm of Whitney & Kemmerer, was a member of this committee you refer to? A. Yes; Kemmerer, Dr. Howe and Mr. Connell.

Q. Mr. Connell was represented by some member of his family, the record shows. A. He was there a number of times. I think his son-in-law represented him. Then there was Thomas, of the Erie, and Truesdale, and the vice-president of the Lehigh Valley, John B. Garrett, and myself.

Q. My question was whether Whitney and Kemmerer are not operators on the lines of the Philadelphia and Reading Railway Company to some extent. A. Kemmerer is on the lines of the Reading and I think is on the lines of the Central. I think he is on both.

Q. Did Whitney & Kemmerer ever enter into any of these contracts, notwithstanding they were members of this committee and in the negotiation of the form of the contract? A. No; I think they never entered into it. Not with our company; no.

Q. Nor with the Coal and Iron Company nor with the Lehigh and Wilkes-Barre? A. No, sir.

Q. Now, then, this petition continues: "and while said contracts are cast in the form of contracts of sale, in reality they are but mere devices to stifle competition and create a monopoly in the sale of anthracite coal throughout the several States in the manner aforesaid." Is that true? A. No.

Q. Where were these contracts negotiated? A. They were not negotiated; formulated.

Q. I mean negotiated later, subsequently to their formulation, those to which the Philadelphia and Reading Coal and Iron Company is a party? A. After this committee had formulated a plan of contract, it was submitted to the different companies and then my relation to it ceased altogether. I assume that any contracts made by the Coal and Iron Company were made by Mr. Henderson, who was then the vice-president of the Coal and Iron Company, approved, of course, by Mr. Harris, who was president of the Reading Railroad Company at that time. I think I may have made one or two afterwards, but they were simply on the recommendation of the vice-president, who had active charge of the management of the Coal and Iron Company property.

Q. I want to refresh your recollection. These sixty-five per cent. contracts have been in evidence. I call your attention to the fact that all of them were executed by yourself as president, except one by Mr. J. Lowber Welsh, who was appointed by the committee to execute documents during your absence in 1901, and that they were all executed after April, 1901? A. I do not recall that.

Q. Is it likely to be so? A. Undoubtedly, if they were consummated after April, 1901, I would have signed them.

Q. The operation of these contracts entered into by the Philadelphia and Reading Coal and Iron Company related back to the first of November, 1900. Do you recall the reason of that? A. The resumption of mining began then. That is the connection between what I have stated before, that, for the purpose of getting these independent operators to agree to make this advance of wages, so as to end the strike, we agreed that whatever definite arrangement should be made by this committee, should relate back to the first of November, when the mining operations were to begin.

Q. Then the whole motive and purpose of these contracts, so far as your defendants are concerned, were simply what they purport to be; to enable the coal producers, parties to the contracts, to sell their coal in the manner in which they desired, and not for any purpose whatsoever of controlling the output or enlarging the area of control of the Philadelphia and Reading Coal and Iron Company over the production and sale of coal? A. Certainly. There was no thought about that in the negotiations.

Q. They were bona fide contracts for the sale of coal, as they purport to be? A. Certainly.

Q. Without any ulterior purposes of any kind? A. None whatever.

Q. Do you recall where it is provided in those contracts that delivery shall be made, at the breaker or elsewhere? A. Oh, no. Do not ask me the contents of the papers. The papers will show what that is.

Q. Now, coming to the next specification, marked "*b*," in paragraph 7 of the petition, in relation to the exact dealings of the Erie Railroad Company and the New York, Susquehanna and Western. A. Of course, I know nothing about that.

Q. I want to ask you, so as to respond exactly to the allegation here, were those contracts entered into pursuant to any arrangement of any kind whatsoever to which the Reading Company, Philadelphia and Reading Railway Company or the Coal and Iron Company, or the Central Railroad Company of New Jersey or the Lehigh and Wilkes-Barre Coal Company were parties? A. I cannot answer for the Central Railroad of New Jersey, because it says in the month of January, 1898, when I had no connection with the Jersey Central. I answer positively for the other companies, that we did not know anything about those transactions at all, had no concern or connection with them and did not know and were not consulted, and do not to this day know anything about them except what is referred to in this bill and from general hearsay.

Q. They were not entered into in pursuance of any combination to which you were a party? A. Certainly not. The Philadelphia and Reading Coal and Iron Company, or none of the Reading Companies, had any knowledge of or were participants in any way in any such arrangement.

Q. As I want to reserve the allegation of subdivision "*d*" for a little later, I want to call your attention to the allegation of subdivision "*e*," under paragraph 7, as to the negotiations and circumstances which led up to and resulted in the acquisition by the Erie of the Pennsylvania Coal Company. Were those transactions conducted in pursuance of any combination or agreement or understanding to which the Reading Companies or any of them were parties? A. We were not connected with them and we knew nothing about them, had no knowledge whatever of any of the negotiations, the Reading Company or the Railway Company or any of the companies. There is

this qualification to be made in my case; that in one branch of that controversy, the controversy before the Pennsylvania Coal Company was acquired, I was called as counsel on behalf of the Erie to argue a case here in the Circuit Court of the United States, relating to a railroad in which there was a controversy between the Pennsylvania Coal Company and the Erie about some railroad. The exact point and the details now I have forgotten, but Mr. John Johnson and myself were called upon by the local counsel of the Erie to appear in the Circuit Court of the United States and argue that case, and I mention that so that there may be no misunderstanding. That I knew as counsel, but I did not know anything at that time about the proposed acquisition of the Coal Company, because the fight was between the Pennsylvania Coal Company and the Erie. The case has passed out of my memory.

Q. Before entering upon your examination relating to the allegations contained here in paragraph "*c*," I want to ask you some general questions about the business of the Philadelphia and Reading Coal and Iron Company. It is charged generally in this bill that inordinate prices for the sale of anthracite coal produced by these various defendants, are maintained by them as the result of combination, and so forth. I would like first to have you state exactly how, so far as the Philadelphia and Reading Coal and Iron Company is concerned, its circular or quoted prices are made and how and why and under what circumstances the changes are brought about whereby the price is reduced in the Spring, beginning with the first of April, and gradually advanced ten cents a ton until October, as is shown in this record. How are these things done by the Philadelphia and Reading Coal and Iron Company? A. I think, in order to get a clear understanding, that I must state the physical relatins of these regions to one another. By reason of the geological formations, the most expensive mining is in the Schuylkill Region. The veins there are distorted, some of them standing almost perpendicular. They are

very large—thick, I mean—which involves more troublesome mining by reason of having to support the roof. The quantity of water is enormous. I think that our experts have testified that we lift twelve tons of water for every ton of coal that we lift from our mines. The result is that coal can be produced in the Wyoming Region, where they have no serious water problems and where the veins are nearly flat, and where they are not so thick, and therefore less mine timber is required, at from forty to fifty cents a ton cheaper than we can. The Wyoming Region, you will see by the statistics, has been increasing its output steadily year by year, by reason of the easier mining, so that relatively, whilst we have an enormous acreage of coal lands in excess of the Wyoming Regions, the Wyoming Region annually produces nearly sixty per cent.—running from fifty-nine to sixty per cent.—of the total output of coal. The Lehigh District has not increased for years. It holds at about from eleven to twelve per cent., and our own output runs from twenty-nine to thirty per cent. in the Schuylkill Region. Now you see that, from our reports, that are in evidence, and from the testimony of our experts, with all the capital we have invested, at the present prices of coal we make very little profit in mining anthracite coal. In point of fact, if the Coal and Iron Company charged the common royalty for the coal mined from its own lands, it could not make a profit at all. The profit is below twenty cents a ton. This year I think it will be fourteen and six-tenths, something like that; but, for general purposes, say below twenty cents a ton. We have not averaged that in the last number of years. We therefore must fix a price on coal that will enable us to operate our mines, and the other regions naturally get the benefit of it. There is a natural law on that subject which has been stated by all writers on political economy. For the purpose of accuracy, I have formulated it:—"The price of the entire supply of anything necessary for a community will be regulated by the cost of production of that portion of the necessary supply which is produced at the greatest expense." Anderson, Malthus, Ricardo, Smith and every-

body since have practically laid down that rule, and it is a law of common sense illustrated in various ways. Here are two farms. They may be side by side; one can grow wheat to the extent of twenty bushels to the acre, and the other thirty; but there will be no difference in the price of the wheat. If the price of anthracite coal were fixed so as not to yield a profit to our Coal and Iron Company, the result would be that the mines would stop for a short time, and the price of coal would necessarily go up, because the withdrawal of thirty per cent. of any commodity would naturally affect the price, and the final result would be that, the price advancing, our mines would resume operations again. Therefore, it is the general custom of the other companies, I believe, to follow our circular. We fix the best price we can get, and the Wyoming Region and the people that can produce coal cheaper than we do, necessarily follow our price, because it would be foolish for them to undertake to cut it when there is a market for the reasonable output of existing mines, taking it year in and year out. There are times—just now that is true—when the market will not take the quantity of coal that can be mined; but we generally have to store coal in the Summer months in order to provide for the Winter months' supply. In case of accidents to the mines or severe Winters, that affect transportation, the public might be without coal, and we try to avoid that. Coming down to the period of 1901, when I see that the charge has been made that the price of coal was arbitrarily fixed by agreement at fifty cents a ton, there was no agreement about that at all.

Q. In 1900 wages were advanced? A. I do not speak of that. I was not president at that time. I am speaking of it after this strike of 1902. After the strike of 1902 was practically settled by the reference to the Strike Commission and by the agreement of the men to go to work, I sent for Mr. R. C. Luther, who was then General Superintendent of the Philadelphia and Reading Coal and Iron Company, and who is now dead; and W. J. Richards, who was General Superintendent of the Lehigh and Wilkes-Barre Coal Company; and S. B. Thorne, who was General Superintendent

of the Temple Iron Company, and I directed them to consult with all their practical men to ascertain what, in their judgment, would be the increased cost of mining coal by reason of the advance of wages that was coming upon us, and by reason of the enormous expenditures to which we had been subjected in various ways, in the obstruction and drowning out of mines, and everything that entered into a long continued suspension of mining operations. Mr. Luther reported, and he was the important man, that the increased cost would be from seventy-five to eighty cents a ton. After they made this report to me I sent for Mr. Henderson, who was the vice-president of the coal company, and in charge of the Sales Department, and Mr. Thomas Richards, who was the manager of the Sales Department and was probably the best informed man on coal sales in the United States. He had been in the Sales Department of the Philadelphia and Reading Coal and Iron Company from the beginning and his judgment on market conditions I think was as good as that of any man I ever knew.

Q. He is now dead? A. He is dead. We discussed the whole subject for a full half day. Some of them wanted the price of prepared sizes advanced seventy-five cents a ton. After discussing the whole matter and calling in Mr. Harris to help in the consultation, I concluded that it would be fair and right to try fifty cents a ton on prepared sizes, leaving the steam sizes free to compete with bituminous coal as best they could. I do not recall that I made any ruling on the steam sizes for this reason, that the steam sizes were affected by the price of bituminous coal, and I could not tell—the price of bituminous coal had advanced by reason of the suspension of mining of the anthracite—and I could not tell what effect our resumption would have immediately on the price of bituminous coal. I knew in the end it would bring it down to normal conditions. That is the whole story. After our circular was issued, I was pounded right and left by the individual operators for not consulting them, and some of the other coal companies said I was arbitrary, and all that sort of thing, and that if we had not

led off, a bigger price could be obtained for coal. It went on until it resulted in a suspension finally. The price of coal did not fall, as I supposed it would, rapidly. Mr. Simpson has testified to that, I believe, how we suspended the sixty-five per cent. contracts. They had run the price of coal up so high that we could not stand to pay sixty-five per cent. in New York harbor on that price, and we suspended wherever they asked it, suspended the operation of the sixty-five per cent. contracts, to let these individual operators take advantage of the scarcity of coal and sell it at a high price, because if we had not, they would have sued us and made us pay that enormous high price ourselves, whilst we were trying our best to hold down the price of coal to protect the community. I even went to the extent of refusing to sell to a dealer that would put up the price of coal. I had no legal right to do that, but I made an honest effort to protect the public in the prices. I saw that all the Government buildings at Washington and the schools and all public places were supplied with coal at a reasonable price. That is the whole story of the advance of fifty cents a ton, and that it was a fair advance is shown by our reports that we have not been able to make what I consider a fair return on our coal. It was just to the public, because our reports on coal mining operations show that we made no profit on it. There is one thing that I want to call attention to. The public insists always on taking the price of domestic sizes of coal and then figuring out that, taking that price, the coal companies make so much profit. They will forget that forty per cent. of the output of the coal mines is sold below the cost of producing it and that it is because of this fact that the coal profits of the coal companies are so small and so entirely different from the public estimate of them.

Q. You have stated that the circular or quoted price of coal was fixed by the Philadelphia and Reading Coal and Iron Company itself, independently of all the other parties defendant here. I would like to call your attention to what I mentioned in the question, as to the fixing of the method of reduction of the price in the Spring and its gradual advance in the Fall. Mr. Henderson's

testimony covers it, but I would like to have it supported by your own. A. The difficulty in the management of the anthracite coal business is this; that in the Summer months, when mining can be done cheapest, the public requires no coal for household purposes, and there is no sale for domestic sizes of coal. There is only a sale for what we call steam sizes, in operations that are carried on, of course, in the Summer months. Under the old system we found that, in the Fall months and Winter months, the demand for coal was so active that we really could not supply it, and it was necessary to try to make some provision to have a supply in excess of the daily mining. The storage of coal is very expensive. By accurate, actual experience, we find that, not allowing anything for the cost of storage plants, it costs us from thirty to thirty-five cents a ton to put coal in a yard and to take it out. This not only includes the handling of the coal, but there is what we call a degradation in sizes. The Stove Coal and the Egg Coal and the Pea Coal, of course, will break up, so that when you put so many tons of a different kind of coal in the storage yards and you pick it up again, you will find that the large sizes have decreased, upon which we get the higher price, and the smaller sizes have increased. Now, to try to avoid the cost of storing coal and the difficulty we had in the Winter months of supplying all the coal required, the difficulties of transportation, and everything else arising, we conceived the idea of trying to induce the dealers to store this coal during the Summer months, and the effort was made, therefore, to reduce the price of prepared sizes fifty cents a ton in April, forty cents in May, thirty cents in June, twenty cents in July and ten cents in August. During those five months, if you will add that up and divide it, you will find it represents practically what we considered cost of storing the coal during that time. It had the further advantage of enabling us to reach markets in the Summer months that cannot be reached in the Winter months. You take a point like Superior where the Coal and Iron Company has a large yard for distribution and

where, by the time we get through improving that yard, we will have an investment of over a million dollars in the yard itself. Now, we could not ship coal to that yard in the Winter months, when the lakes are frozen over and an all rail movement would be impracticable. So we try to get our coal by the lakes in the Summer months, and we try to induce the dealers, instead of our carrying the coal, to buy it in the Summer months, and the inducement to buy it is this reduction of price to them, so that, if they buy their coal in April at fifty cents a ton less, they can afford to carry it until the Winter months come, when they retail it out. That is the whole theory.

Q. Mr. Henderson in his testimony has stated that, for the considerations which you have now mentioned, he obtained from you as the executive, authority to put in the plan of making the reduction of fifty cents a ton on prepared sizes in April and gradually advancing it ten cents a ton. I simply ask whether you confirm that statement that it was done under your sanction and authority? A. It was done under my sanction and authority. Who made the original suggestion, whether Mr. Henderson or Mr. Richards, I do not know; but it was suggested to me by somebody and I afterwards consulted them. Who originally made the suggestion at the time, I do not know; but it struck me as plausible and I thought over it and looked into it carefully and reached the general result I have stated here, and which is a sound economic proposition in my judgment.

Q. It was put in effect by the Philadelphia and Reading Coal and Iron Company from the considerations named and not as the result of any combination or agreement with other people? A. No; I had no consultation with anybody else about that, because there was no reason to. The conditions were not alike at all. I think that the other companies would have been very glad to have kept us from going West, for example. Quite a number of times I have been told by my friends operating coal companies and railroad companies in New York that we have no business to go West with our coal; so I do not think they would have helped me in any such contingency.

By MAJOR WARREN:

Q. It enabled you to run your mines, and keep your labor together and all that? A. Certainly, and it is very important.

By JUDGE CAMPBELL:

Q. There is one other subject which seems to be prominent in the minds of Government counsel, and that is that the Philadelphia and Reading Railway Company is making enormous earnings out of the transportation of anthracite coal. I would like you to put on the record some account of the revenues which the Railway Company receives from transportation, independent of anthracite coal. A. The whole story of the Reading illustrates the falsity of the notion that any railroad can prosper by handling a single commodity like anthracite coal. With all the efforts of the brilliant men who preceded me to make the Reading Railroad Company profitable, and with a tonnage in anthracite coal that was then the largest in proportion to any company— originally seventy per cent. of the traffic receipts of the Railroad Company were derived from anthracite coal—ten years ago it got down to sixty per cent. and, with all this traffic, it was impossible for the Reading Railroad Company to make any money, and it is not necessary to go into the history of its receiverships, and all that. The moment the policy of the Reading Railroad Company changed so as to agree with their neighbors, to a fair exchange of all kinds of traffic, the prosperity of the Reading Railroad Company began, and now its receipts on anthracite coal are down to thirty per cent. and decreasing every year.

Q. You do not mean to say that the revenue is decreasing, but the proportion? A. No; I did not say the revenue, but the percentage is decreasing every year. That was brought about by increasing the merchandise traffic, the passenger traffic, the miscellaneous traffic and the bituminous coal traffic. Just at the present time our bituminous coal tonnage exceeds the anthracite coal tonnage, and last year I think it was within a million or two tons of it. I made a little statement, which probably I

can find here, that will give you those percentages. They are very interesting. The percentage for the year ending June 30th, 1908, was thirty and five-tenths and for this year it is thirty and three-tenths. As illustrating what I mean, I will take one period. Take the fiscal year ending June 30th, 1898. The gross receipts of the company were $21,986,834. In the year ending 1907, just ten years afterwards, they were $43,528,936. You see the gross receipts have doubled. Now take the item of merchandise. The merchandise receipts in 1898 were $7,163,000. In 1907 they were $16,360,000. The passenger receipts in the former period were $3,877,000; in 1907, $6,399,000. The miscellaneous receipts were $1,014,000 and in the latter period $2,039,000. The bituminous coal increased from $1,414,000 to $5,642,000. The anthracite increased from $8,517,000 to $13,088,000. In other words, there was fifty-two and nine-tenths per cent. increase in the ten years in the anthracite business; two hundred and ninety-two and five-tenths per cent. of increase in the bituminous business; eighty-five and five-tenths per cent. increase in the merchandise business; the passenger, which I did not figure, was one hundred per cent., and the miscellaneous one hundred per cent. I am using this now to show you that the increased prosperity of the Reading system has not come from anthracite coal. It has been a factor, of course. Without the anthracite coal, we would lose so much revenue; but the development of the Reading Railway System has been, during the past ten years, owing to the enormous increase of traffic other than anthracite, and largely due to a policy of exchanges. Instead of the Reading system being an Ishmaelite fighting everybody, we frely exchange at proper connecting points, with all the railroads, without discrimination or distinction, the Baltimore and Ohio, the Pennsylvania, the New York Central, the Lehigh Valley, and with all the railroads, so that they get the benefit of the traffic from our region and we get the benefit of the traffic that comes from all over the United States into this territory and into the ports here.

By JUDGE MOOT:

Q. In the temporary absence of Judge Campbell, I will ask you, if you did not make the exchange voluntarily, as an interstate carrier under the Interstate Commerce Act which you would be compelled to do now? A. Certainly. There is no competition between railroads, in rates, and cannot be under the Interstate Commerce Act. The competition is limited to facilities, and service. The explanation is very simple. Every rate must be published. Now take this example: suppose the Pennsylvania would publish a rate, a cut rate say between Philadelphia and New York, reducing the rate twenty-five cents a ton. We would find that out immediately, because it cannot be a secret rate, it must be filed with the Interstate Commerce Commission. What would be the result? We would have to follow it and reduce our rate immediately, otherwise we would lose our traffic. So that the Interstate Commerce Act as a statute has had this effect, that there is no longer any possible competition between railroads as to rates. The only competition is in facilities and service, terminal facilities, and prompt handling, and there is the sharpest competition in that. There is a new connection being made with our system through Clearfield. We expect to compete with the northern lines of railroad sharply in trade to New York and Philadelphia. Why? Not because we will cut the rate, because that would do us no good—they would cut back—but because our distance has become shorter, with the single exception of the Pennsylvania Railroad, and we can make better time and can give better facilities, and therefore we hope to get part of the trade.

By JUDGE CAMPBELL:

Q. Preliminary to the negotiation whereby the Reading Company acquired a certain interest in the capital stock of the Central Railway Company of New Jersey, I would like you to state on the record the interdependent traffic relations of these two companies, or rather the dependence of the Philadelphia and Reading Railway system upon the tracks of the Central Railroad of New

Jersey for its entrance to the Jersey City terminus for the conduct of traffic originating on and tributary to the Philadelphia and Reading Railway Company? A. Assuming that you have the maps, showing the locations of the different roads, it is apparent that the Jersey Central system was and is still absolutely essential to the Reading system to get an entrance to the New York harbor, which, of course, is the great harbor of the country. For years and years attempts were made to unite these two properties, which complement and supplement each other. They are not parallel and competing lines in any sense of the term. The Reading must get to New York over the Jersey Central system, and the Baltimore and Ohio, which is an important connection with the Reading and gives it some of its largest freight, must get to New York over the Central system. The Central Railroad fortunately has the best terminals in the harbor of New York; I mean rather facilities for the best terminals. They own large areas of land there that are capable of development to meet the wants of the company for a hundred years to come. You know the history of the different efforts. Twice an effort was made to unite the Jersey Central and the Reading. The last time reference is made to Judge Magill's decision, in which he declared that, under the laws of New Jersey, a lease could not be made. Whether or not that was good law I do not know. An appeal was taken which was undecided, because the financial terms of that lease were impossible. The commercial and the business part of the plan by which the Lehigh Valley and the Jersey Central were leased by the old Reading Company was absolutely and unqualifiedly false. It was the work of boys ignorant of financial conditions, and was bound to fail and it did fail utterly and the appeal never was tried, because the thing broke down financially. In December, 1900, I happened to be in New York and I was told that the gentlemen who controlled the New Jersey Central were tired of it and that the stock was for sale. I was also told that the Baltimore and Ohio Railroad had made an offer for this stock,

which the parties had refused because they considered it too small. This information was a great surprise and I at once went to Mr. Morgan, who was a voting trustee of the Reading Company, and told him that the situation was most alarming; that it would be the ruin of the Reading property if an antagonistic company got control of the Jersey Central, or if the Baltimore and Ohio got us by the throat in that way and could control our terminals into New York, and that therefore the matter called for prompt action. I told him then that I always thought that the Jersey Central could be legally bought; that the limitations in the laws of New Jersey applied only to leasing and that, under the powers of the Reading Company and under the statutes of New Jersey, we could undoubtedly buy a majority of the stock. He told me to keep my own counsel and look up the whole subject and see what could be done. I came home and I made a critical and careful examination of the reports of the New Jersey Central Railroad for a number of years, to see what in my judgment its stock would be worth, taking into account the future possibilities. I also took up the question of how we could buy it and finance it. I made a report to Mr. Morgan in about a week's time. It took me a good while to get all the information I got, because I had to do it secretly, you know, as counsel. I sent it to Mr. Morgan and it was such a big letter that he did not read it until in a few days I called his attention to it, and then he picked it up and read it in the evening after business hours. When I got home, one night in Reading there was a call at the telephone and I went to the phone and Mr. Morgan was there, telling me to come to New York immediately, that I must come on at once about that Jersey Central business. I went to New York the next morning. I saw Mr. Morgan and told him that if he thought the financial plan was sound and he could back it—it involved that collateral trust mortgage, you know, and the borrowing of money—that I would be responsible for the rest of it, that I thought it was sound. He said to me, "What do you think is the fair price?" I said, "I

have named what I think is the fair price in there." He called for Mr. Baker, who was the chairman of their committee, or a leading man in it. Mr. Baker came over and we sat down and dickered for about five minutes, until Mr. Baker said they would take one hundred and sixty and I said I thought I would advise that, and I went to the phone and called up Mr. Welsh and Mr. Harris, who were, with myself, a majority of the executive committee and they said, "Yes," and the deal was closed. That is the whole story. We did not even make a writing about it. Mr. Baker said he would undertake himself and with Mr. Maxwell and friends to deliver us a majority of the stock. I do not know what further I can say about it.

By MR. DICKSON:

Q. It was not done to stifle competition? A. Indeed, it was to enable us to compete with the people that had us by the throat in the New York harbor and it was absolutely essential to the prosperity of the Philadelphia and Reading Railway Company and the territory that depends upon the Philadelphia and Reading Railway for transportation that we should get terminals in New York. Instead of stifling competition, it created the competition that has led to hourly trains—the best trains, let me say, in the world—between here and New York, in competition with the Pennsylvania Railroad, which, take it all in all, is the greatest railroad—I will not say it is the best—in the world.

By JUDGE CAMPBELL:

Q. To respond to the allegations of this petition, was this purchase of this interest which the Reading holds in the Central Railroad Company's stock, induced by any understanding or agreement, or combination with other defendants in this suit, or any of them? A. They knew nothing about it. I do not think they would have liked it then, or that they like it very much now. There was nobody that knew anything about it. There was no consultation with anybody, except the story as I have given it to you. It really was my own initiative when I heard that this property was for sale, and the general

impression that the New Jersey Central had was that, because these prior suits had been decided against us, the Reading could not take it and we were not considered as a factor in the purchase at first. When I heard that it was for sale, I simply said: "We can take that property by buying the stock," and it was so secretly done that nobody knew anything about it until the thing was consummated, except Mr. Twombley, Mr. Robert Bacon and Mr. Morgan. Mr. Twombley happened to be in Mr Morgan's office—in fact, it was in Mr. Twombley's office that I heard first that this stock was for sale.

Q. One of the allegations of the plaintiff's petition is that, instead of an outright purchase of securities and stocks, this was effected by means of a mere exchange of securities. A. Exchange of securities?

Q. Yes; in other words, that the Reading Company in payment for that stock exchanged its collateral trust bonds with the owners of the stock for their stock. What is the truth about that? A. Why, no.

Q. That is the allegation in the petition. A. Where do such stories arise? When we determined to take it, we took the usual way of creating a syndicate, and the Reading bonds were sold to the syndicate and they paid their money for them. The only trouble I had about that was that some of the Philadelphians here complained that they did not get a big enough share in the syndicate. All those bonds were sold in the regular way. The bankers formed a syndicate and subscribed for them and put them on the market, and they are good bonds everywhere except in your State of New York, where, under the insurance laws, they seem to be tabooed for insurance companies; but other people consider them about the safest bond there is to be found anywhere. It is not creditable to your New York legislation on insurance investments.

Q. At the expense of some reiteration and repetition I would like to ask you two or three questions suggested by the terminology of the so-called Sherman Anti-Trust

Act, which declares in Section 1, that every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States is declared to be illegal. In respect of any of the transactions to which your attention has been called, has there been any contract, or combination in the form of a trust or otherwise, or conspiracy, whether in restraint of trade or otherwise, with and of the other defendants in this case in connection with the conduct of the business of mining, or selling, or transporting the same, or in respect of the acquisition of Jersey Central stock by Reading Company? A. None whatever.

Q. In Section 3 it provides that every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce in any of the United States, &c., is declared illegal. Has there been any combination or confederation of any kind, nature or form between these defendants or between your defendants and anybody else in respect of these matters? A. I do not know of any. I have been no party to any conspiracy or combination. My object has been to develop trade and not to restrain it.

Q. Is there anything in the relations between these parties to restrain the Philadelphia and Reading Railway Company from carrying all the traffic it can procure? A. Nothing whatever.

Q. Is there any understanding between the companies that the Philadelphia and Reading Coal and Iron Company shall not produce and sell all the coal for which it can find a market? A. None whatever. We are absolutely free to sell.

Q. Is there any understanding or agreement between these parties whereby the other defendants are limited or restrained in any manner or form from the production and sale of all the coal they can find a market for? A. I know of none and have never been a party to any.

Q. Or to restrain the railroad companies from transporting all the traffic which they can obtain? A. No agreement in restraint of trade in any way or form. Every company is free to do as much business as it can, in its own way.

By MAJOR WARREN:

Q. When did you first learn of the proposition by Simpson & Watkins to sell their interest in certain coal companies and land companies up in the Wyoming Region? A. I first heard it from Mr. Coster.

Q. He was associated with J. P. Morgan & Co. at that time, was he not? A. Yes, he was one of the partners of J. P. Morgan & Co.

Q. He has since died, I believe? A. He is dead, yes.

Q. In what way were you associated with that transaction thereafter? A. After the transaction was spoken of Mr. Stetson and myself were employed as counsel to see what could be done in case Simpson & Watkins and those other collieries could be bought at a fair price. Mr. Coster, who was on the executive committee of the Reading Company, was exceedingly anxious that the Reading Company should join in the purchase of those properties. The purpose of it was to help the Erie; the situation was a financial one really. J. P. Morgan & Co. had reorganized the Erie Railroad. They had just a year or two before taken hold of the Lehigh Valley. I had been their counsel and made the mortgages for the Lehigh Valley and fixed up that loan, called the General Mortgage or Consolidated Mortgage, I have forgotten which. The Reading had just been taken out of the hands of the Receivers and when these collieries were offered for sale in New York, the Erie people became very much alarmed. They were afraid of losing that tonnage and, although it seemed to be tied to them, they argued that they might lose the tonnage and the Lehigh Valley would lose the tonnage and that would seriously affect those properties and the general financial condition of the country, so that our stock would be affected and all other stocks would be affected for the time being, that it would be a disturbing factor. I protested personally that I could not see anything in the suggestion of building that railroad. I did not see that it would amount to anything. I did not believe in it at all. It did not go to the New York waters and I did not see how they could get coal to the New York harbor or to any other terminals so that

they could be a serious factor. To that the answer simply was that the mere threat of doing that would affect Erie securities and affect all the rest of us. Finally I suggested, at a meeting of our executive committee, that a committee of experts should be appointed, including our own men, to see what the real valuation of these properties was. They agreed to that, and R. C. Luther, Warriner and May were directed to make an examination of these properties. In the meantime, the New York parties concluded that in some way they would take these collieries, whether we went in or not, and then I was called upon again to see in what way, if they did take them, a holding company could be created. The usual suggestion was made in New York that they become a Jersey company; but, as a Pennsylvanian I have always been averse to New Jersey getting jurisdiction over Pennsylvania property and I have always tried in my business and in my practice, to have Pennsylvania corporations hold Pennsylvania properties. I think it is wiser and better to have the governmental jurisdiction where the property is. I got thinking over it and just about that time my co-stockholders in the Temple Iron Company were very tired of the business and so was I. The Temple Iron Company was an inheritance. Three of my particular friends were relatives of the gentlemen who owned the Temple stock who had organized the company and they, as a family matter, asked me; and I had to come to their relief. They induced me, as a personal friend, to take one-fifth in that company and then they further compelled me to run it and act as president for quite a number of years. They were gentlemen of wealth, not in active business, bachelors, and they wanted to sell. It just occurred to me that that charter was the very one that would answer this purpose, and I sent for the Messrs. Smith and asked them whether they would sell their stock, and they said they would, at a figure that they named; and there was Frank Smink and Broden who had a few shares, a small interest in the company, and they all agreed. After finding we could do that, I told the Reading people that the advantage to the Reading Company would not only be in having an interest in these coal properties,

which were reported very valuable by this committee, but that it would insure the continuance of that Temple furnace on the lines of the Reading road and that I was not sure that we would continue it long, that I was too busy to be bothering with running an anthracite furnace. It was very important; how important it is, you may understand when I say that a furnace on a railroad is about the best freight producing plant that you can have. That iron furnace pays over on the average about $30,000—probably higher than that—a month freight on the inward freight alone. The consumption of coal, of limestone and of ore, what we call the raw materials that go into a furnace for the smelting of iron creates a great many tons, and, whilst the rates are not very high on those raw materials, the tonnage is very heavy. We finally agreed, on the part of the Reading Company, that if the New York friends, Coster, insisted upon it, we would join them on one other condition, namely, that we should go in the syndicate. I thought that probably there might be some money made in the syndicate, as there was, of course—I mean that the bonds were sold at a figure that was tempting.

Q. Is this the syndicate agreement to which you refer? (Showing witness Government Exhibit No. 166.) A. Yes. The subscription of $640,000 in the name of Drexel & Co. was the subscription of the Reading Company. After we agreed to go in, then the question was what collieries had to be taken. We agreed to buy the Simpson & Watkins collieries; but, on the report of Mr. Luther, after I had figured over it, I thought that prices they had placed on the other collieries were outrageously high, and when we got together in New York I told them I would not advise the purchase of the other collieries at all, that the report was not favorable to them. Then we agreed simply to take the Simpson and Watkins collieries, and the question came up of guaranty. These people that were selling and the bankers who were to handle the bonds wanted what we called a joint guaranty. I did not want a joint guaranty with some of the companies that I did not think were quite as strong as we were, and the Executive Board

of the Reading, Mr. Harris and Mr. Welsh and Mr. Dickson, sustained me in that. Then the question was how to fix up the guaranty. I suggested that we take the tonnage of each of the companies that had gone in for the preceding year and divide that up and make that the percentage that each was to guarantee.

By MR. MCREYNOLDS:

Q. The anthracite tonnage? A. The anthracite tonnage, and divide it up, and that fixed the percentages. That was reported to the different presidents, and I suppose their boards took action; I do not know. They are all separate agreements. That is a matter of record.

By MAJOR WARREN:

Q. The price paid; what would you say as to that, in view of the assertion in the Government's petition that the defendants who did become interested in the Temple Iron Company acquired the companies of Simpson and Watkins at a high price? A. That is quite a mistake. Simpson & Watkins sold their collieries so reasonably that if either of you gentlemen can get hold of that stock at double its par value, I will take it off of your hands.

Q. You are speaking as of to-day? A. I am speaking as of to-day. Those collieries have turned out most admirably. They have been well managed—*I am the president*—and the Iron Company is a great success. It has one of the best managements, with Mr. Albert Broden at the head of it, and he is making money now.

Q. Paragraph "*d*" of the Government's petition, upon page 21, is the one that has to do with what I speak of as the Temple Iron Company transaction. The railroad to which you referred a few moments ago, which you said did not figure in it, so far as you were concerned, because it did not go to tide, was the New York, Wyoming and Western Railroad, was it not? A. I do not know what it was called.

Q. It is charged in the petition that it was and, as an actual fact, that was the name of the road. A. I do not remember that. At that time and now it was so easy to get together over night and get out a charter for a rail-

road on short notice here in Pennsylvania, that the practice of getting up charters as clubs was one familiar to me in the railroad business and it did not scare me a bit. I did not believe in it and nobody connected with me did. It was a pure bluff gotten up to scare people into buying out collieries at a high figure. By reason of the partners that Simpson and Watkins had, who were fair men—and so are Simpson and Watkins—their properties were not overvalued and, as things go, they were undervalued. I have no doubt at all that the Simpson and Watkins collieries will work out so that we will get a profit of a hundred per cent. on our stock holdings, which is doing pretty good.

Q. The Government alleges that, in order and intending to shut off the competition which they feared would be created by the construction of this railroad, the charter of which shows its eastern terminus as in Eastern Pennsylvania, in Northampton County about opposite Belvidere, and in the sale thereof—referring back to the Government's petition—throughout the several States, the defendants, naming the Reading Company, the Lehigh Valley, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company and the New York, Susquehanna and Western Railroad Company, entered into an agreement, combination and conspiracy to prevent, and did thereby prevent, the completion of the projected independent and competing railroad by diverting and drawing away from it the support and influence of its principal promoters and those who would have furnished it with a large part of its tonnage, and at the same time and by the same act pooled and divided among themselves, except the Reading Company, the traffic, to wit, 1,500,000 tons annually, more or less, which moved from the collieries theretofore owned by the said firm of Simpson & Watkins to market points in other States. Let me ask you as to the three charges there. In the first place, it already appears in evidence that Simpson & Watkins, so far from being the controlling factors, or the principal pro-

moters were not by any means either the controlling factors or the principal promoters; the subscriptions to the capital stock of the proposed railroad showing that out of the ten thousand shares Mr. Simpson subscribed for two hundred and fifty for Mr. Fuller, not for himself, and that Mr. Watkins subscribed for five hundred shares only. Second, the charge is that Simpson and Watkins, through the ownership of these several collieries, would have furnished it, that is, the new proposed road, a large part of its tonnage. I think you have already said, but I am going to ask again so as to be sure of it, whether you, in your investigations, did not ascertain that the coal tonnage represented by the several collieries controlled by Simpson & Watkins was under what were then called the sixty per cent. contracts with the coal companies of the larger railroad companies? A. Yes, and the leases came from these companies, so that the transportation was tied up, and that I used both to the Erie and Lehigh Valley, who were scared about this; but their answer was that their credit was so bad that any discussion or talk about taking away their tonnage would affect their securities and that if these collieries, therefore, could be bought at a fair price, we ought to buy them, and, in addition to that, Mr. Thomas thought it would strengthen the credit of the Erie Railroad, which needed strengthening, and strengthen the credit of the Lehigh Valley, to have the other companies join in helping to protect their property in that way. It was really from first to last a financial movement to help sustain the market for securities and was handled and dominated by the bankers. That is the truth about it.

Q. What have you to say as to the Government's charge that by the same act the tonnage was pooled and divided among the purchasers, these several railroads, except the Reading Company? A. There was no change in tonnage at all, with the single exception that Mr. Watkins undertook to divert some tonnage from the Ontario and Western.

Q. At the Northwest Colliery? A. Yes, and they filed

a bill. When my attention was called to it I said, "That won't do at all. They have a contract for that tonnage and it must not be disturbed." I was vice-president and in charge of the iron department at that time and was general counsel, and I simply sent for Mr. Fowler and said, "Here; your contention is absolutely right. They have no right to divert this tonnage and I won't stand it for a minute," and I advised Mr. Watkins to recede from his position. So that really the tonnage conditions remained all the time just as they were under Simpson and Watkins, with the single exception that there was some diversion of coal to the Jersey Central under these conditions; there was one colliery called Babylon that made pretty bad coal, and there was always a fight among some of the coal companies as to who should use it for supply coal.

Q. You mean Edgerton? A. I believe you are right, Edgerton; and out of charity towards one of the companies, I agreed to take some of that Edgerton coal for the Jersey Central supply coal; but otherwise I do not recall any diversion in any shape, form or manner.

Q. Right there, as to that Northwest dispute with the Ontario and Western, do you not recall Mr. Watkins' reason for opposing the Ontario and Western in their efforts to retain the tonnage? A. No; I do not.

Q. Let me call your attention to the answer that was filed in the case, in which Mr. Watkins said that the contract with the Ontario and Western had been made with the Northwest Coal Company, Limited? A. There was not a legal successor; I remember it now. I told him that was not fair. I remember that.

Q. As an actual fact, even if that had been successful, the Northwest Colliery being situated three miles above Carbondale, the only railroad which could have secured what would have been theretofore the Ontario and Western tonnage would have been the Erie Railroad by its Jefferson branch, which already had a portion of the colliery tonnage under contract; do you not remember that? A. No; I do not. Those are details of your railroad systems up there which I am too busy to figure out.

Q. Was this Temple transaction entered into under any agreement, combination or conspiracy to prevent either the construction of the proposed New York, Wyoming and Western, or of any other railroad to tide-water points? A. No. I have told you the circumstances already under which it was acquired and the reasons. I cannot give any fuller answer than I have given.

Q. You recall, I assume, that in 1901 the Temple Company then being the owner of the Simpson & Watkins collieries, by the ownership of the stock of those companies, became vendors in what are now called the sixty-five per cent. contracts, just as the other independent operators did in some measure, do you not? A. Yes. The Temple Company thought it profitable and desirable for them to make these contracts, to relieve themselves of the necessity of maintaining their own coal agents and coal offices, and thought it was more economical to sell their coal to the coal companies and those contracts were entered into.

Q. The Temple Company then, from its acquisition of the Simpson & Watkins collieries down to the present time, has been operating the collieries thus acquired and selling its coal and delivering the same at the breakers' mouth to certain coal companies either under the sixty per cent. basis of settlement or the sixty-five per cent. continuously; is not that right? A. Yes.

Q. And, so far as its coal department is concerned, that has represented all of its business within your knowledge? A. Yes. Under the contracts, we simply mine and deliver the coal. We are not vendors of coal at all in retail. We simply deliver the coal under these contracts to the coal companies that take our coal at the breakers, furnish the cars and take the coal.

Q. And you have no knowledge of or interest in the destination of that coal after your delivery to them, have you? A. We have not anything to do with it, no direction of it at all. We have nothing to do with the price of it. We have to take the price that the market determines by the agreement under the sixty-five per cent. contract,

taken in New York harbor, and Ruley's statement of what the average price is.

Q. Do you happen to know or do you not, of the offer to the Temple Iron Company in recent years to acquire other properties, the individuals coming to your association to sell, an investigation being made and your refusal to take them? A. At the time there were a number of options on collieries and we examined them very carefully and refused to take them and refused to buy any of the collieries—any additional collieries—because we thought the price was entirely too high. The only exception we made was in one case. The parties owned the ground in fee—we were lessees—and the burden under the lease became very heavy. We were required to pay a minimum royalty that amounted to very much more than we could mine out of that colliery in a year. I have forgotten which one it was. Then I suggested to our manager that he see whether he could not buy the fee to get rid of the lease and he bought the fee. I have forgotten who that was. We paid a big round sum for it, but it was a profitable thing in the end because it was better than paying a big royalty and we could mine the coal as we pleased then. That is the only transaction I remember, the only subsequent transaction. That was the buying of the fee of a lease to get rid of the royalty and we paid the sum of $500,000, as I recollect, making an additional issue of bonds for the time being to pay it. That was the Sterrick Creek, I believe.

Q. What, if anything, has the Temple Iron Company had, or attempted to have, to do with any fixing of the price of coal anywhere or the rates of transporation for coal anywhere? A. Nothing to do at all with it. It never attempts to interfere or advise about a subject of that kind. The Temple Iron Company is simply a mining company and attends to the business of mining and nothing else. The impression that the public has received, because of these railroads having an interest in it, is an entirely erroneous impression. We never deal with the subjects of freights or rates on coal. The meetings of

the Temple Iron Company are confined absolutely to transacting our own business. At times something has been interjected by somebody; for example, one time there was a letter received there at the Temple Iron Company complaining about the differential between the lower ports and the upper ports.

Q. From Dickson & Eddy? A. Yes, from Dickson & Eddy. They thought the Temple Iron Company was a convenient place to find all the presidents together. We never dreamed it was the business of the Temple Iron Company. A committee was suggested there and a committee was immediately formed of railroad people. Henderson was on it. I do not think I was at the meeting. When I heard of it I told Henderson to tell them to mind their own business, that the Temple Iron Company had nothing whatever to do with that. At another time there was something brought up, I remember, about absorbing this bureau. Watkins got it into his head that the expense of Ruley's bureau could be met by making it a department of the Temple Iron Company and making that money for the Temple Iron Company. It was brought before the board and referred to me and I simply buried it because we did not want to do anything of the kind. At another time Watkins got it into his head that it would be a wise thing for the Temple Iron Company—and I think that was in his head from the beginning—to get the control of the sales of coal and sell coal on commission and advance money to companies that had coal in storage. That was his favorite idea, and finally, when we turned him down and said we would not agree to anything of the kind, he said there was no use in his bothering with the Temple Iron Company, that he could be more useful elsewhere, and he resigned and sold his stock. Then I took the presidency and it has been run as the most harmless mining company in the State of Pennsylvania. It has no more to do with the price of coal, with the transportation of coal or the rates on coal than you gentlemen who represent the Government here have to do with it, and I am sure neither of you have anything.

Q. That suggestion of yours as to the occasional attempt to interject into the Temple Iron Company something outside of its particular line of business; does that refer also to something which I see the Government offers here about a committee to consider the advisability and expendiency of making a flat rate to shippers, on page 346 of their record? A. Yes. Some of those salesagents and people who represented the companies in the beginning had the impression that they could get hold of all the presidents together at a meeting of this kind, where some joint action was required, as a joint rate does. Of course one company could not for example, change the differential between the upper and the lower ports, without creating chaos and, under the Interstate Commerce Act where joint rates are required, we are required to meet together. That is one of the few things we can do under the Interstate Commerce Act without becoming conspirators and criminals. Occasionally in the beginning, with that idea, there was something of that kind interjected of which no notice was taken at all and no action taken. They generally came to me and I turned them down. I guess that was before I was president, when as counsel, I was omnipotent on legal questions.

Q. As a fact, you were not present at that meeting? A. No, I was not present. I remember Mr. Henderson coming to me and asking me in holy horror what all this meant, and I told him he should tell them to mind their own business, that we had no authority and did not want to interject those things into the Temple Iron Company.

(At 1.10 P. M., a recess was taken until 2.15 P. M.)

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2 P. M.

GEORGE F. BAER, resumed:—

Cross examination.

By MR. MCREYNOLDS:

Q. What was the original name of the incorporation now known as the Reading Company? A. The Excelsior, was it not?

By JUDGE CAMPBELL:

Q. Excelsior Enterprise. A. I think the original name was Excelsior, and then it was changed to the National.

Q. Excelsior Enterprise was the name, as the record shows. A. I do not recall that. At the time I dealt with it, it was the National.

By MR. MCREYNOLDS:

Q. You were counsel for the parties interested in reorganizing the Reading Company after the receivership of 1896, as I understand? A. Receivership of 1893?

Q. Yes, sir, the receivership of 1893. The reorganization took place in 1896. A. Yes, final reorganization.

Q. Prior to that receivership of 1893, is it correct that the Philadelphia and Reading Railroad Company owned all the stock of the Philadelphia and Reading Coal and Iron Company? A. Yes, excepting that which was required to qualify directors.

Q. Who now owns all of the shares of the Philadelphia and Reading Coal and Iron Company? A. The Reading Company owns it, with the exception of such shares as are necessary to qualify directors.

By JUDGE CAMPBELL:

Q. Subject to the liens? A. That is understood. What do you mean by that?

Q. It is pledged? A. I know it is pledged. Its stocks are all pledged in the general mortgage.

By MR. MCREYNOLDS:

Q. What else does the Reading Company own? A. What do you mean—in the way of stocks?

Q. Yes, sir, or anything else. I ask you only generally, of course, not to go into detail. A. The Reading Company owns the stock of the Philadelphia and Reading Railway Company; it owns the stock of the Coal and Iron Company; it owns the stock of the Reading Iron Company, and it owns the stock of quite a number of subsidiary railroad companies. The list is given in our annual report.

Q. Does it own any railroad equipment? A. The Reading Company owns the equipment.

Q. What equipment? A. The rolling equipment, what we call the rolling equipment, and leases it. Both the railroad equipment, and the marine equipment was owned by the Reading Company, and it leased that equipment to the Reading Railway Company.

Q. Prior to the receivership of 1893, did the Philadelphia and Reading Railway Company own its own equipment? A. Yes.

Q. When the reorganization took place, a new railroad company was formed, under the laws of Pennsylvania, called the Philadelphia and Reading Railway Company? A. Yes.

Q. And that company took over what property from the receivers?

JUDGE CAMPBELL:—Not from the receivers. From the purchasers.

By MR. MCREYNOLDS:

Q. Whatever the arrangement was? A. The Philadelphia and Reading Railroad Company was foreclosed on a mortgage, and the property was purchased by a committee representing the security holders, a reorganization committee. The real estate of the Coal and Iron Company was also sold because it was included in the general mortgage. The Reading Railroad Company and the Coal and Iron Company were joined in a mortgage. The franchises of the Coal and Iron Company were not sold, because we wanted to preserve them. The receivers also sold the property under a decree that was not covered by the mortgage, and the purchasers bought that in, and then we reorganized the whole system by making the Reading Company the holding company, and the railroad properties were transferred to the new Reading Railway. The coal properties were reconveyed to the Coal and Iron Company, whose franchises had not been disturbed, and the iron properties, which the old railroad company owned, were transferred to the Reading Iron Company, which was also an iron company. All the stock practically, except to qualify directors, was owned by the Reading Railroad Company. The four great com-

panies, therefore, were, the Reading Company, the holding company; the Philadelphia and Reading Railway Company taking the railroads over subject to prior liens and mortgages; the Coal and Iron Company, to whom the coal property was again conveyed, its debts being paid; the Reading Iron Company, which was not affected and not sold out in the foreclosure—it was an independent company—and the stock simply was sold, and then the iron properties, of which there were not very many of any value, which all formerly belonged to the railroad company, were conveyed to the Reading Iron Company.

Q. So that the result now is, that the coal properties have their title in the Philadelphia and Reading Coal and Iron Company? A. Yes, sir.

Q. The iron properties have title in the Reading Iron Company? A. Yes, sir.

Q. And the Philadelphia and Reading Railway Company owns the tracks and rails —— A. And the terminals.

By JUDGE CAMPBELL:

Q. And leasehold? A. And leasehold.

By MR. MCREYNOLDS:

Q. That formerly belonged to the Philadelphia and Reading Railroad Company? A. Yes, sir.

Q. And the Reading Company owns the equipment? A. The Reading Company owns the equipment.

Q. And leases it to the railroad company? A. Yes, sir.

Q. Why was this changed arrangement made when that receivership was closed up? Why did not the railroad company take over the property of the coal company, and hold it as it formerly did? Why was this holding company interposed? A. For purposes of convenient financing, and for the purpose of creating securities to meet the reorganization plan. The old stockholders and bondholders of the Reading Railroad Company had to contribute certain amounts of money, and it was thought wise to reorganize the whole system in this way. It was

a financial reason primarily. The Reading Company then created the securities, and created a collateral trust mortgage.

Q. Could not that have been done with the railroad? A. No, it could not have been done under our laws. The railway company could not have held under a reorganization.

Q. Why? A. Because there was no statutory power.

Q. It did hold under the old system? A. I know, but when we reorganized we had to accept the provisions of the new constitution, which prohibits that.

Q. So the whole arrangement was really worked out in order to get around the new constitution? A. No, sir, the whole arrangement was worked out to get the Reading properties together on a feasible and reasonable basis that would answer all the purposes for which the stockholders desired security, both for the bondholders and the stockholders, and we were not going to be so unwise as to accept a condition of things that we did not have to accept, and we simply brought ourselves within the statutes of Pennsylvania.

Q. What was the constitutional provision which interfered with the new railroad company holding the mining property? A. I have forgotten the exact terms of the Constitution. There is a clause in the Constitution that limits the corporate powers of railroads when they become subject to the Constitution, but the courts interpreted the Constitution to simply mean that it applied to future corporations, and did not work any forfeiture or change in existing charters. The Supreme Court has passed upon that, so that all existing charters preserve all the rights and powers they formerly had. It is a question even, by accepting the new Constitution, the old railroad did not still have that power, but it was not considered desirable, for many reasons, to do that.

Q. These corporations, the Coal Company, and the Railroad Company, and the Reading Company, have you for their president? A. Yes, sir.

Q. You are also president of the Reading Iron Company? A. No; I am not.

Q. Are you on its board of directors? A. Yes, sir. I am chairman. Mr. F. C. Sminck is the president of the Reading Iron Company.

Q. Is the board of directors of the Philadelphia and Reading Railway Company and the Reading Company the same? A. No; they are not the same. If you will give me the annual report there ——

Q. You mean there are some men on one that are not on the other, do you? A. Yes, sir.

Q. I do not care to go into details. You generally vote the entire capital stock of the Philadelphia and Reading Railway Company at the annual meeting, do you not? A. The Central Trust Company of New York, which is the trustee in the mortgage, supplies the voting power, and they execute the proxy, which is generally executed to me; sometimes to somebody else, if it is not convenient for me.

Q. What was the business of this Excelsior Company, which subsequently became the Reading Company, when you first knew it? A. The first I knew it, it was building the Bound Brook Road.

By JUDGE CAMPBELL:

Q. It was a railroad crossing New Jersey, where the predecessor had run? A. Yes, sir; the old National, what is now the Bound Brook.

By MR. MCREYNOLDS:

Q. Why was that charter taken up, instead of a new one being taken out, at the time the Reading Company was put in possession of the stocks? A. Because its corporate powers suited us exactly for the purposes that we intended.

Q. It was an old company, incorporated many years before by the legislature? A. Yes, sir, and antedated the new Constitution, and, out of double precaution, we had the Attorney General proceed against us to test the validity of the charter in every way before we used it, and it was held to be a valid subsisting charter by the State.

Q. It was taken up because it antedated the present Constitution of Pennsylvania? A. And had corporate

powers that could not have been obtained by special legislation. Under the new Constitution all legislation must be general in Pennsylvania, and this was an old, valid, subsisting charter, which had special powers which we deemed valuable, and have proven so.

Q. Prior to the time that the Reading Company came into possession of all the capital stock of the Philadelphia and Reading Coal and Iron Company, what was the business of that Coal and Iron Company? A. Of the Coal and Iron Company?

Q. Yes, sir. Prior to that time? A. Mining and selling coal.

Q. Where were its markets? A. All over the United States, practically where anthracite coal is consumed. They reached the New England States, and Pennsylvania, and some coal went West—wherever anthracite was used.

Q. It was doing an extensive interstate business? A. Yes, sir.

Q. Since the Reading Company acquired it, has its business been of the same general character? A. Yes, sir.

Q. Still doing an extensive interstate business? A. Yes, sir.

Q. And has been since when, since 1890? A. Yes, always had. It sends coal to New England, to Canada, to New York, and to Western points, New Jersey, and all places where anthracite coal is consumed which we can reach.

Q. It has agents in these places to sell it? A. Not all those places. Our sales are all made here in Philadelphia. We have agents representing us, who report to the central office, but they are mere subagents of the general office here. We have one in New York; we have one in Chicago, and we have one in Boston. The Boston man covers the whole of the New England territory. We have one at Superior. I do not know whether he lives at Superior, or Minneapolis.

JUDGE CAMPBELL:—Minneapolis, I think. A. I do not know where he lives.

By MR. MCREYNOLDS:

Q. What fixes the freight rates for the Reading Road? A. It is hard to tell what fixes the freight rate. It is fixed by long custom. They have never been changed in my administration. The cost of transportation, the cost of assembling the coal, the cost of terminal facilities—all those things—competitive conditions fix rates.

Q. Do competitive roads have anything to do with it? A. Certainly, in certain districts they have—in all districts. You cannot have a different freight rate, for example, to New York harbor, where there are many roads coming in together. You have to meet their competitive freight rate. The explanation I gave this morning covers that.

Q. What do you regard as the competitors of the Philadelphia and Reading now in New York harbor, as to anthracite coal? A. All of the companies.

Q. Won't you be good enough to name them for us? A. All the companies that ship to New York. They would be the Pennsylvania Railroad, the Lehigh Valley, the Delaware and Lackawanna, the Delaware and Hudson, the Erie, Ontario and Western. I guess those are all the roads leading to New York directly or indirectly.

Q. Those roads are all carrying anthracite coal to the New York harbor? A. Yes, sir.

Q. And you regard them as competitors who must be considered in fixing rates? A. Yes, sir, unquestionably.

Q. When you first knew the Lehigh and Wilkes-Barre Coal Company what business was it engaged in? A. The mining and selling of coal.

Q. What territory did it sell its coals in? A. Its territory was limited to the East. The explanation of that is this: Some agreement in the lease of the Lehigh and Susquehanna Railroad to the Central Railroad of New Jersey requires the coal, with the exception of twenty-five per cent., produced by the Lehigh Navigation Company, to be sent over the Lehigh and Susquehanna Railroad, because it is in the nature of a partnership. The Lehigh and Susquehanna earnings are divided between the Le-

high Navigation Company and the Central; and there was a collateral covenant in one of the agreements, by which the coal tributary to the Jersey Central, that it could control in all its corporations, should be sent over this road as far as it was possible. So the Lehigh and Wilkes-Barre territory is a confined territory. It ships no coal West.

Q. It does to all the Eastern markets? A. Yes, sir.

Q. Ships coal to New York harbor? A. Yes, sir.

Q. And to New England points? A. Yes, sir.

Q. And has been engaged in that business since 1890? A. Ever since I knew the company; 1890, yes. 1901 when I first took control of it.

Q. Is it engaged in the same business now? A. Yes.

Q. Prior to 1901 were the Philadelphia and Reading Coal and Iron Company, and the Lehigh and Wilkes-Barre Company, competitors as sellers of coal in New York harbor? A. Yes and they are to-day.

Q. And generally throughout the Eastern territory they were competitors at that time? A. Yes, sir, through that Northern territory; not in this territory, nor in the Southern.

Q. I believe you said the Reading Company purchased the controlling shares of the New Jersey Central Railroad back in 1901? A. My recollection of that was in December, 1900, I think the final papers were executed.

By JUDGE CAMPBELL:

Q. Negotiations began, but the record here shows the consummation was in 1901. A. The bargain was made, I think, in December. In the last week in December I think was the conference that I described when we bought from Mr. Baker.

By MR. MCREYNOLDS:

Q. The stock was transferred some time in 1901? A. Yes, sir.

Q. You became president shortly thereafter? A. I did not become president of the Reading until in April, 1901. Then Mr. Maxwell remained president of the Jersey Central for some months. I do not recall the date. I will get that for you.

Q. Some time in 1901 you became president of the Jersey Central? A. Yes, sir.

Q. What arrangement now exists between the Philadelphia and Reading Railway Company, and the New Jersey Central Railroad Company, in reference to operations over the track of the latter to New York harbor, from Reading Junction, or Bound Brook? A. We have what is called the Blue Line agreement, which extends between the Jersey Central and the Reading, and the Baltimore and Ohio.

Q. How long has that agreement been in force? A. It was revised in 1901, or 1902.

JUDGE CAMPBELL:—This thing is all in the record.

By MR. MCREYNOLDS:

Q. Has there been any change in the arrangement between the two roads in reference to operations over that part of track of the New Jersey Central Railroad lying between Bound Brook and Jersey City? A. There have been different operating arrangements that were made by the Operating Department, but none that amount to anything. They are the details of management.

Q. The same general arrangement is in effect to-day as existed prior to the acquisition of the stock of the Jersey Central by the Reading Road? A. Yes, sir, but the reason of the acquisition was, that that arrangement was threatened very violently. It was to secure that for all time that the stock was purchased.

Q. The Reading Company does not own all the stock of the Jersey Central Railroad, does it? A. No; I wish we did.

Q. About what proportion of it do you own? A. We own a majority of the stock. I will get you all that. I will give it to you exactly.

Q. If you can, give it to me approximately. A. We own a majority of the stock.

Q. It is a slight majority? A. Yes, sir, not much over a majority of the stock. I think the stock is in the neighborhood of twenty-seven million and I think we have fourteen million five hundred thousand or six hundred thousand, something like that.

Q. You told us a good bit about the negotiations leading up to the settlement of the strike of 1900, the outcome of which, among other things, was what are now known as the sixty-five per cent. contracts? A. Yes.

Q. In which you made some reference to correspondence with Mr. Hanna and others, and you used, during your description of those negotiations, the term, "we;" said "we negotiated." Now, who do you mean by that "we." I would like to have it on the record. A. I told you that there was a committee representing the anthracite operators. We had formed a committee in that strike situation. There were some independent operators, I do not recall who they were. The miners organized, and appointed, I have forgotten who it was, and the Coal and Iron presidents, some of them railway presidents, as in the case of Mr. Truesdale—I do not know whether he was president then or not? Was he, in 1900?

JUDGE CAMPBELL:—No, I think not.

A. Yes, I believe he was. In 1900 Mr. Truesdale and Mr. Thomas and Mr. Walter and myself—I was appointed to represent the Reading Company, the Coal and Iron Company, in that strike—and we had numerous conferences with John Mitchell, with the Civic Federation, and with all sorts of people who wanted to advise us how to end the strike.

Q. All the railroads were represented in the conference? A. All the coal companies.

Q. They are owned by the railroads. They are the same people, are they not? A. No they are not always, not by the railroads. The Philadelphia and Reading Railway owns no coal properties.

Q. But the Reading does? A. Yes.

By MR. MCREYNOLDS:

Q. Those sixty-five per cent. contracts differ very radically from the old contracts, do they not? A. I suppose they do. They were matters of long negotiation, and the difference in the requirements of the preparation of the coal. Complaint had been made constantly that under the old contracts they shipped coal that was not marketable,

and one of the efforts we made was to standardize, if I may use that term, the preparation of coal, so that on the inspection of coal it would come up to the standard that is fixed in those contracts. That was a long and protracted negotiation to get those details. Of course the individual operators wanted the best terms they could get, and we, as sellers, wanted the best we could get, free from impurities.

Q. Since you have been president of the Philadelphia and Reading Railway Company has it extended its mileage? A. No, it has increased its mileage by double tracking, and third tracking, and fourth tracking, and increasing its facilities. I do not know that I have made any radical extensions. We have built, maybe, little branches into industries, but generally I would say that we had not extended the mileage, except in relief lines. We built a belt line around Reading, to relieve the congestion in the city of Reading. We built a line here to relieve the congestion in Philadelphia, from Neshaminy Falls, instead of fourth tracking on the old line. We found it desirable to build what we call a relief line.

Q. I had particularly in mind whether you had extended the road by purchase, or building into new territory. A. No.

Q. You told us that the bituminous coal traffic had been largely increased, if not created, in the last eight or ten years. Where do you get your bituminous coal principally? (Handing witness map.) A. We own a line to Shippensburg, and we own this line down there to Hagerstown. Here is our connection at Cherry Run with the Baltimore and Ohio Railroad. The Baltimore and Ohio Railroad delivers us bituminous coal at that point, which comes in around here. (Indicating.)

Q. This moves up to Shippensburg? A. Yes, sir.

Q. Does it? A. Then it is our line from Shippensburg.

Q. How does it move over your line? A. This is our line here. (Indicating on map.)

Q. How does it move over your line? It moves to Harrisburg? A. It will move to Harrisburg and then to any point on our line.

Q. To Philadelphia? A. To Philadelphia. The most of it moves from here to Port Reading.

Q. The coal that goes to Port Reading, does that move up to Philadelphia, or North of Philadelphia? A. Yes, sir, that is what we call the Baltimore and Ohio. Then the Western Maryland delivers at the same point, at Shippensburg. The coal comes in over its line, and the Norfolk and Western delivers some here.

Q. Bituminous coal moving from Shippensburg to New York harbor, how far does it pass over your rails? A. It may pass in either way. What is the distance?

Q. Yes, sir. A. I will have to give you that accurately. I cannot recall all those distances. It passes over our rails all the way to Philadelphia, and in going to New York, if it goes by the Philadelphia route, it passes on our rails till we get to Bound Brook, when it gets to the Jersey Central. If it goes by the Allentown route, it passes through Harrisburg to Reading and Allentown, and then takes the Jersey Central from Allentown to New York.

Q. Don't you deliver bituminous coal at Port Reading and New York harbor? A. There is very little handled at Port Reading. Most of the bituminous coal comes to Philadelphia. There is some handled there, but it is not an immense traffic at that point.

Q. Do you know what you get per ton for moving the bituminous coal? A. No, I do not. At Harrisburg we get coal from the Pennsylvania Railroad; large shipments there interchange with the Pennsylvania Railroad. We get it at Harrisburg. At Newbury Junction we get the coals from the New York Central System and from the Rochester and Pittsburgh, and, I suppose, some from—those are the main sources there. We consider it generally as divided into four fields, the Western Maryland, the Baltimore and Ohio, the Pennsylvania there, on what we call the New York System, and the R. & P., up at Newbury Junction.

Q. Where does most of the bituminous coal which moves over the rails of the New Jersey Central go to New York harbor? Does it go to Jersey City, or where? A. I do not think we have much bituminous coal at Jersey City through,

except that which comes from the Beach Creek Region. There is a company there that has one of our docks, our friend the Congressman that died—Kerr—Peacock & Kerr. It is now the Pennsylvania Coal and Coke Company that operates mines on the Pennsylvania Railroad, and up in the Beach Creek Region, and they get considerable coal at that dock in New York. That is the principal coal, except our supply coal that goes there.

By JUDGE CAMPBELL:

Q. It is called Port Liberty, is it not? A. Yes; to the Jersey Central New York Terminal.

By MR. MCREYNOLDS:

Q. You say there is not very much of the bituminous coal moving over the rails of the Jersey Central? A. Except that.

Q. Going to New York harbor? Where does it go. A. The most of the Jersey Central coal is distributed to the manufacturers along its line, with this exception, the New Jersey Central has comparatively little bituminous coal traffic, except Peacock & Kerr's. They change names so often that I think I may have that another time, and I will give you that exactly.

Q. What figures come under your observation which are furnished by Mr. Ruley's Bureau, here in Philadelphia? A. The monthly shipments of coal by the different companies, which the different companies have, for a series of years, reported to Mr. Ruley, ever since I know anything, but that Bureau was originally gotten up by Jones, and there are monthly statistics reported of the transportation of anthracite coal.

Q. And they are collated and you get copies? A. Every month Mr. Ruley furnishes us with a copy.

Q. So you know just how much you ship, and how much your competitors ship? A. That is right.

Q. What figure does Mr. Ruley make up in reference to sales and prices? A. Under the sliding scale, which you understand, without describing what it is ——

Q. Yes. A. The selling price of coal is reported at New York harbor to Mr. Ruley, and he, in turn, furnishes those statistics to somebody at Washington.

By MAJOR WARREN:

Q. Mr. Nealle? A. Mr. Nealle.

By MR. MCREYNOLDS:

Q. What does he furnish you with? A. He does not furnish anything to us. We get from Nealle, or from Ruley, a note saying that the price of coal, the average price, was at so much for that month, which we use as the basis of wages. He reports to Nealle, and Nealle determines that.

Q. Nealle sends that to you. Don't Ruley report something else to you about the price? A. No. Nealle sends that to Ruley, I guess, and Ruley sends it to us. I will get you one of those reports.

By JUDGE CAMPBELL:

Q. Your statement is correct. Nealle sends it direct to your accounting office. A. I think so, but I cannot remember with positive detail.

JUDGE CAMPBELL:—You report your coal sold to Ruley, and Ruley reports to Nealle, and Nealle makes the computation, and communicates the result, under the award of the Strike Commission.

By MR. MCREYNOLDS:

Q. What I want to get at is, what Mr. Ruley furnishes you in the way of sales prices, or other companies. A. He does not furnish us any sales prices except this New York harbor business. We do not know what people are selling coal at, except we find out by some customer coming and swearing by all that is good and bad that he can buy coal at such a figure, and you do not know whether to believe him or not, from some rival company.

Q. Was it you who directed Mr. Ruley to get up prices of sales at Brooklyn a few years ago? A. No. I do not know when that originated. I do not know anything about that. Ruley has made a report on Brooklyn; it is several years ago, long before I had anything to do with it. I do not know who got it up, or why it was gotten up.

Q. But you got it? A. We got Ruley's statement of the average price of sales in Brooklyn.

Q. Coming now to the Temple Iron Company, you have explained to us that you were one of the owners, and president of it, prior to 1899? A. Yes.

Q. The iron property is located on the line of the Reading Railroad, is it not? A. Yes, sir; five miles above Reading.

Q. It depends upon the Reading Railroad for its supplies, and for the shipment of its finished product? A. Yes, sir; it is the initial line of the Reading.

Q. Was the Reading the only line that reached it? A. Yes, sir.

Q. Always has been the only line? A. Yes; the Pennsylvania is right near it, but it has no connection.

Q. Does the Reading carry any coal to the Temple Iron Company? A. The Temple Iron Company had formerly used anthracite coal. When these arrangements were made, the fuel was anthracite coal. We have changed the stack, and the hot blast of the Temple Company, so that we use coke, and we got the coke wherever we can. Some comes in from the Connellsville Region, some from the Greensburg Region, and some from West Virginia, but it all comes from the Reading System at some point; it is delivered to the Reading Railroad. Most of it comes by the Pennsylvania Railroad, and comes in through Harrisburg, and then out through Reading, and up the East Penn.

Q. The Reading Railroad carries no anthracite coal that is mined from any of the Temple Iron Company's collieries, does it? A. No; not as the initial.

Q. Has it ever? A. No; it has no lines in that territory at all.

Q. You told us that this Temple Iron Company arrangement was gotten up, as you understood, by certain financiers in New York, for the purpose of strengthening the securities of the Erie Company largely? A. Yes, sir.

Q. How did it happen that the Delaware and Hudson Company did not guarantee a part of its security? A. I did not know, except that I suppose they thought the

guarantors were strong enough. They had enough without that line—I do not know; I cannot answer that. I could probably guess at it, and that would be that the people, the financiers who engineered the thing through were not potential in the Delaware and Hudson. It may be. I do not know anything about that.

Q. Is it not a fact that J. P. Morgan & Co. at that time were the financial agents of all these roads that did enter into the Temple Iron Company arrangement? A. No. I do not know if they were of the Lackawanna. At that time they were of the Reading and the Lehigh Valley, and of the Erie.

Q. Have they continued to be the financial agents of those three you have just mentioned? A. I cannot answer that. I speak for myself. I have not needed a financial agent. I have not been compelled to borrow any money.

Q. Recently? A. No; not recently. We borrowed enough in the past. I cannot answer that.

Q. You spoke of Mr. Twombley; who was he the representative of? A. Frankly, he was one of the partners of Simpson & Watkins. He was very much interested in the sale of Simpson & Watkins' collieries. That is very simple.

Q. With what financial interest in New York was he identified? A. What is he not identified with. Twombley is generally interested in a good many things. He is a gentleman of vast means. He is one of the financiers and advisers, and has been for a great many years. I think he used to know more about New York than anybody else. When I wanted to find anything out, Twombley's office was a splendid place to go to find out what was going on.

Q. He was supposed to be identified with the Vanderbilt interests particularly, was he not? A. He is one of the Vanderbilt family, through marriage, and a very potential factor in the management of the Vanderbilt properties, I always understood.

Q. What did you have to do with the acquisition of the stock in the Lehigh Valley Railroad Company, by the Reading Company. Give us the facts about that, as you understand them.

JUDGE CAMPBELL:—I suppose I could, with propriety, object to that, as not proper cross examination. The witness' attention has not been called to this subject, but I will waive my privilege.

A. The Lehigh Valley property was in a very bad shape. Several years before we acquired this stock, financiers took hold of it, and a new mortgage was created, and a whole lot of securities issued, with the view of tiding it over, and the conditions were very bad; it was constantly in need of money. It was thought very dangerous to let the Lehigh Valley at that time go into the hands of a receivership, because of the effect it would have upon the other railroads and the general business. The Packer stock was for sale, and we reached the conclusion that it would be a wise thing for the railroads that were considered strong to go in and take that Packer stock, which was not a majority, and practically take hold of the management, and see whether the Lehigh Valley could not be made a prosperous company. After talking that over with a number of gentlemen, Mr. Morgan being anxious that it should be done, I came over to Philadelphia, and saw Mr. Stotesbury, and suggested that he see the trustees of the Packer estate and of the college—the Lehigh University had an interest in it. We agreed to buy the stock. Then we divided it up between the four systems. I insisted that the Lake Shore and the Vanderbilt System, which was the strong system, should take a big block of the stock, and the rest of us should not be loaded down, because I did not know whether we could save the Lehigh Valley. We bought the stock, and we went into the Executive Committee, and we had to change presidents, because he threatened then to throw the road into receivership unless we did all sorts of things that we could not see fit to do. Then we got Mr. Thomas, of the Erie, to come in, and we have managed it along

now for ten years until we have demonstrated the ability of the Lehigh Valley to take care of itself, so that its stock is at great price in the market. We never had control of the Lehigh Valley; we never had a majority of the stock. The other stockholders wisely were contented with our management, because we were making money for them, and making their property valuable. The Lake Shore has parted with its holdings, and the Erie, I believe, has parted with theirs, some of it at least, but that is utterly immaterial, because we never had a majority of the stock of Lehigh Valley.

By JUDGE CAMPBELL:

Q. Never sought it? A. Never sought it. We did not bother about that, because the stockholders in the Lehigh Valley always sustained our management, and it was entirely for the purpose of saving that property, and giving it credit, and seeing whether it could be made a property to pay. The reason for that was the general effect that the failure of any one company has on the business of another. It is what the banks have to do in stringent times. That was the only purpose, and we have made merchandise out of it. It has been a profitable investment.

By MR. MCREYNOLDS:

Q. Do you remember when this stock was taken over by these railroads? A. The Lehigh Valley?

Q. Yes, sir. A. I should say in the Summer of 1901, probably May, along there.

Q. It was all understood in advance what these railroads were to do? A. No, it was not. Mr. Morgan did not know what he would do with that stock. He thought it ought to be taken, and he asked me whether I thought, at the price at which it was said it could be bought, 31, it would be a safe investment. I came over to Philadelphia, and made some examination, which I had gone over as counsel for Mr. Morgan. I had, as counsel for Mr. Morgan, made an exhaustive examination of the Lehigh Valley properties when I prepared that mortgage, and I was very familiar with its business, and I looked into it again, and saw some people to see whether at a figure of

31, with the advantage of traffic, we could keep up the Lehigh Valley. You must understand, the Lehigh is dependent u[illegible]s here for its entry into Philadelphia. It has no lines of its own. The traffic is all transferred to us at Bethlehem. We were greatly interested in the prosperity of the Lehigh Valley, because it is one of our principal feeders here, and we did not want to see it get into trouble. Then, after this stock was acquired by Mr. Stotesbury, acting for Morgan & Co., it was divided up.

Q. Amongst these roads? A. Amongst the Erie, the Lake Shore, and the Central.

Q. Does the Lehigh and Wilkes-Barre Coal Company pay dividends? A. No.

Q. Has it ever? A. Not in twenty-five years, I guess.

Q. Does the Jersey Central advance it money from time to time? A. Not now. The Jersey Central many years ago took the control of the Lehigh and Wilkes-Barre, and had to guaranty mortgages, and advanced large sums of money. That was before our acquisition of the Lehigh and Wilkes-Barre. The Lehigh and Wilkes-Barre, of late years, has been paying off some of the advances that the Jersey Central made from time to time.

Q. As the president of the Central Railroad Company of New Jersey, you seem to have signed its answer in the equity cause wherein the United States was complainant, and the Central Railroad Company of New Jersey and others were defendants, commonly known as the Commodities Clause. There are some things in the answer that I want to ask you about, to bring out the facts. You can answer whether that is true or not. I ask you if you did not do that? A. Yes.

Q. In that answer it is said, "this defendant alleges that throughout its corporate existence the transportation of coal from the anthracite coal fields of Pennsylvania has constituted its principal business, and the chief source of its earnings." Do you understand that to be the fact? A. I should think so. It transports the coal of the Lehigh and Wilkes-Barre, and it transports the coal of the Navigation Company. I suppose at the time that was supposed to be correct.

Q. That was about a year ago? A. Yes, sir. I think that was a general statement. I think that was so. It was prepared with a good deal of care.

Q. I call your attention (and the stenographer may copy it later) to the portion of this answer, beginning with paragraph 12, and ask you to state whether the facts stated there are in harmony with your present understanding, and if so, the stenographer will copy it in as part of the record. A. I think that is a fair statement of the facts referred to.

(The paragraph in the answer above referred to is as follows):—

"This defendant, further answering, says, that anthracite coal is an article of prime necessity, and is universally used for domestic purposes throughout New England and the Middle Atlantic States, and to a great extent throughout other sections of the country. The source of the entire supply, save a few small deposits of inferior quality, is located within the State of Pennsylvania, and the deposits extend over an area of only about 484 square miles, divided for trade purposes into three 'Regions', the Wyoming (sometimes called the Lackawanna) Region, the Lehigh Region, and the Schuylkill Region. Ninety per cent., approximately, of the entire unmined area of anthracite coal is owned or controlled by the following named companies, or by 'subsidiary coal companies,' so-called, that is companies in which they have an entire or controlling stock interest, viz., the Reading Company, the Pennsylvania Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware and Hudson Company, the Erie Railroad Company, and the New York, Ontario and Western Railroad Company, and from seventy to seventy-five per cent. of the annual supply of anthracite coal in the United States is and for many years past has been produced either directly by said companies, as in the case of the Delaware, Lackawanna

and Western Railroad, the Delaware and Hudson Companies, or through the agency of the said 'subsidiary' coal companies.

"The entire distribution of anthracite coal in and into the different States of the Union and Canada for the year 1905, the latest normal year in which there was no strike, and for which complete statistics are at hand, was as follows:—

New England States.....	8,692,504	tons.
New York.	18,125,419	"
New Jersey	7,212,341	"
Supply coal to Railroads.....	4,643,426	"
Southern States	2,080,088	"
Western States.	6,904,314	"
Canada.	2,187,450	"
Other Foreign Countries.....	42,533	"
Pacific Coast.	1,743	"
Pennsylvania.	11,520,383	"
	61,410,201	tons.

"Approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the railroads named from Pennsylvania to markets in other States and Canada. Approximately the same proportion of the entire production of anthracite coal has been so transported from Pennsylvania to other States and countries for many years before 1905, and ever since. The total output of anthracite coal for the year 1906 was, 55,698,595 tons. That for the year 1907 exceeded 68,000,000 tons. That part of the output of anthracite not consumed in the State of Pennsylvania is carried chiefly to tidewater at New York harbor, and is thence transported by water and by railroad to points in New England and the Middle Atlantic States, where the great bulk of the anthracite output is consumed. New York harbor is the principal distributing point for anthracite coal."

Q. Who composes the Executive Committee of the Reading Company? A. Myself, Mr. Harris, and Mr. Stotesbury.

Q. Who composes the Executive Committee of the Philadelphia and Reading Railway Company? A. I cannot recall.

Q. Are the same parties members of that? A. Yes; all those people are members of the Board, but really I do not know. Our Executive Committee seldom meets, because we have monthly meetings of the Boards, and our Boards are small, and there is very little occasion for a meeting of the Executive Committee. I do not think we have had an Executive Committee meeting formally of any company in four or five years.

Q. So really those companies are managed directly through their Boards, instead of through an Executive Committee? A. Yes, sir, the Executive Committee is very seldom called together.

By JUDGE CAMPBELL:

Q. But it would be called in case of an emergency? A. Yes, sir; if there is no emergency arises, the old machine runs along, and I can generally get a Board meeting.

By MR MCREYNOLDS:

Q. Who owns the stock of the Temple Iron Company which stands in the name of the Reading Iron Company? A. The Reading Iron Company.

Q. It owns it? A. Yes.

Q. Who owns the stock of the Philadelphia and Reading Coal and Iron Company, standing in the name of individuals? A. That is stock that we call directors' stock.

Q. Really owned by the Reading Company ? A. Yes, sir. I do not know how to answer that. That stock is transferred, and is held out of the mortgage, and transferred to directors for the purpose of qualifying them. I would say that the Reading Company owns all the stock of the Coal and Iron Company, except the qualifying stock which is in the hands of the directors. As a general thing, it is considered a matter of honor, that if a man ceases to be a director he will transfer that stock to his successor. There is no other way of doing, that I know of.

Q. Does the Philadelphia and Reading Coal and Iron Company own the stock of the Temple Iron Company, which stands in the name of the former? A. Yes.

Q. To fill up the record, if we can, it seems that the Central of New Jersey has no published rate f. o. b. to Port Johnson. Is the rate now, and has it always been the same as the rate to Elizabeth? A. I really do not know. I could not answer about that. I do not know anything about rates, unless my attention has been called to them. That belongs to a department.

Q. Were you aware of the arrangement for a lease by the Philadelphia and Reading Railway Company of the Central Railroad of New Jersey and the Lehigh Valley, back in 1883? A. Only generally. I had no connection with it.

Q. What dividends does the Lehigh Valley Road pay? A. Six per cent. That is, it pays a regular four per cent. dividend, and has been paying an extra dividend of one per cent. semi-annually. It is an extra dividend, so-called.

Re-direct examination.

By JUDGE CAMPBELL:

Q. There is one point to which I want to direct your attention. The gentleman seems to have been curious about your having used the term "we" in connection with certain negotiations. A. I have explained that.

Q. Not the explanation I desire. These negotiations relating to the miners' wages, and so forth, were introduced and brought about by the demands of the United Mine Workers, were they not? A. The United Mine Workers made a demand, and then struck. Then we all got together, all the anthracite interests, individual operators and everybody, and appointed a committee to meet with those people and negotiate with them. And the Civic Federation took it up, and a committee was appointed there, and Mr. Truesdale, and Mr. Thomas and myself were the committee on the part of the operators—we call them operators—and John Mitchell, and—I do not

know—two others, I have forgotten their names, representing the miners. We had numerous conferences. The independents had an organization of their own, and we met together, and we tried to make a common defense, and when I said "we" I spoke of the people who were in active management of the operators' side of the fight between the miners and operators.

By MR. MCREYNOLDS:

Q. Covering all the regions? A. Covering all the regions.

By JUDGE CAMPBELL:

Q. The particular point to which I desire to direct your attention is, whether or not the United Mine Workers did not insist upon their communication being considered by all of the operators jointly; they declined to negotiate with any one unless it included all. A. Certainly. They would not make a bargain with one that did not include all.

Q. It was the insistence of the mine workers upon their negotiations that required these several committees to which you have referred? A. The strike was general, and the demand was for average wages that fitted everybody. We, as operators, had to be united operators in the sense that they were united mine workers.

MAJOR WARREN:—Counsel for the Temple Iron Company offer paper marked "Temple Company, Exhibit No. 24," being a statement showing percentages of the various sizes of anthracite coal, shipped from the several regions during the year 1908, stating that it is a compilation made up by them from the reports of the tonnage from the various regions for last year, and it is offered subject to the right of the Government's counsel to correct the figures, upon investigation, if he finds any errors therein.

Adjourned until Wednesday, September 29th, 1909, to meet at the Post Office Building, Room 47, in the city of New York, at 10.30 A. M.

Met, pursuant to notice, Wednesday, September 29th, 1909, at 10.30 A. M., Room 47, Federal Building, New York, N. Y.

Present—The Examiner; J. C. McReynolds, Esq., and G. Carroll Todd, Esq., for the Government; Messrs. Campbell, Warren, Opdyke, Moot, deForrest, Schaperkotter, Platt and Wells for certain defendants.

TESTIMONY ON BEHALF OF DEFENDANT, ROBERTSON & LAW.

W. H. Jessup, of counsel for John M. Robertson, of the firm of Robertson & Law, produces John M. Robertson, who, being duly sworn, states that the firm of Robertson & Law was organized October 1st, 1891, William Law being the other partner therein; that such firm was dissolved April 27th, 1904; that said Robertson and Law were citizens of Pennsylvania; that November 1st, 1900, they entered into a contract with the Hillside Coal and Iron Company, by which they mined and prepared coal belonging to the Hillside Coal and Iron Company for that company, for which they were paid by that company; that April 27th, 1904, said co-partnership was dissolved by mutual consent; that since that time it has done no business; that said contract between the Hillside Coal and Iron Company and Robertson & Law was cancelled and annulled by mutual consent of the parties thereto by an instrument under seal on the 17th day of May, 1909.

DEFENDANTS' *SUR* REBUTTAL.

Meeting held at Room 324 Post Office Building, Philadelphia, Pa., Wednesday, October 20th, 1909, at 10.30 o'clock A. M.

Government counsel having, against objection, read into the record, as rebutting evidence, certain excerpts or extracts from the annual reports of several so-called Reading companies, and counsel for Reading companies, defendants, having reserved the right to read into the record as sur-rebuttal such other portions of the said reports as they might be advised, and counsel for the Government having assented thereto (Examiner's stenographic minutes, pages 97 and 145); counsel for Reading companies, defendants, now read into the record, from the reports, the following tabulated statement extracted from the annual reports of the Philadelphia and Reading Railroad Company for the years ended November 30th, 1888, November 30th, 1889, November 30th, 1890, November 30th, 1891, November 30th, 1892, and from annual reports of the Receivers for the years ended November 30th, 1893, November 30th, 1894, November 30th, 1895, November 30th, 1896, and from the reports of Reading Company for a period after November 30th, 1896, for the several fiscal years ended June 30th, up to and including June 30th, 1908:—

EXTRACTED AND TABULATED FROM THE ANNUAL REPORTS.

PHILADELPHIA AND READING RAILROAD COMPANY.

RECEIPTS AND DISBURSEMENTS, 1888 TO 1896, INCLUSIVE.

Year Ending Nov. 30th.	1887–88.	1888–89.	1889–90.	1890–91.	1891–92.	1892–93.	1893–94.	1894–95.	1895–96.
Receipts (Railroad).....	$19,521,547.48	$19,018,613.71	$20,934,487.38	$21,853,801.91	$22,986,247.52	$22,828,846.60	$20,344,775.02	$21,300,575.13	$20,682,676.29
Expenses.....	10,315,106.07	10,918,591.69	11,941,581.89	11,862,219.83	12,491,073.11	13,369,423.79	11,278,989.05	11,628,411.77	11,304,859.11
	$9,206,441.41	$8,100,022.02	$8,992,905.49	$9,991,582.08	$10,495,174.41	$9,459,422.81	$9,065,785.97	$9,672,163.36	$9,377,817.18
Receipts—other sources (net).	442,896.60	769,398.26	541,158.97	523,150.90	703,867.99	609,072.25	505,632.46	587,089.46	726,849.63
	$9,649,338.01	$8,869,420.28	$9,534,064.46	$10,514,732.98	$11,199,042.40	$10,068,495.06	$9,571,418.43	$10,259,252.82	$10,104,666.81
Less rentals, etc.	7,399,015.77	8,800,492.42	9,573,399.56	9,092,650.33	9,290,704.09	10,675,188.66	10,478,823.70	9,922,066.87	10,600,052.13
Profit.....	$2,250,322.24	$68,927.86	.....	$1,422,082.65	$1,908,338.31	.....	.....	$337,185.95	$495,385.32
Loss.....	.....	.....	$39,335.10	.....	.....	$606,693.60	$907,405.27	.....	.....

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PHILADELPHIA AND READING RAILWAY COMPANY.

RECEIPTS AND DISBURSEMENTS, DECEMBER 1ST, 1896, TO JUNE 30TH, 1909.

Year Ending June 30th.	7 Months to June 30th, 1897.	1897–98.	1898–99.	1899–00.	1900–01.	1901–02.	1902–03.
Receipts (railway)	$10,933,302.79	$21,475,241.64	$22,456,192.81	$26,109,733.53	$27,617,421.54	$29,170,378.14	$31,708,523.78
Expenses	6,226,956.63	11,142,161.78	12,281,898.07	14,534,065.05	15,742,920.42	16,516,495.70	19,092,084.12
Other expenses	$4,706,346.16	$10,333,079.86	$10,174,294.74	$11,575,668.48	$11,874,501.12	$12,653,882.44	$12,616,439.66
	367,362.78	1,243,866.79	1,598,266.25	2,719,364.18	2,823,431.65	2,253,503.21	1,501,179.90
Receipts—other sources (net)	$4,338,983.38	$9,089,213.07	$8,576,028.49	$8,856,304.30	$9,051,069.47	$10,400,379.23	$11,115,259.76
	204,640.41	511,592.60	546,394.82	793,253.66	726,748.18	345,156.42	721,267.35
Less rentals, etc	$4,543,623.79	$9,600,805.67	$9,122,423.31	$9,649,557.96	$9,777,817.65	$10,745,535.65	$11,836,527.11
	5,077,178.27	9,008,119.52	8,897,679.23	8,904,248.76	9,211,196.79	9,519,123.48	9,519,011.58
Profit		$592,686.15	$224,744.08	$745,309.20	$566,620.86	$1,226,412.17	$2,317,515.53
Loss	$533,554.48						

	1903–04.	1904–05.	1905–06.	1906–07.	1907–08.	1908–09.
Receipts (railway)	$34,250,489.35	$36,832,069.91	$39,658,040.75	$42,676,278.47	$41,640,939.24	$39,830,949.17
Expenses	19,818,929.06	19,480,349.61	22,137,171.72	25,889,331.30	25,458 296.06	23,825,678.53
Other expenses	$14,431,560.29	$17,351,720.30	$17,520,869.03	$16,786,947.17	$16,182,643.18	$16,005,270.64
	1,329,663.81	1,010,437.57	3,539,352.29	1,847,933.64	937,659.64	1,805,722.18
Receipts—other sources (net)	$13,101,896.48	$16,341,282.73	$13,981,516.74	$14,939,013.53	$15,244,983.54	$14,199,548.46
	688,906.51	663,648.97	905,683.83	852,657.97	1,023,656.10	436,312.30
Less rentals, etc	$13,790,802.99	$17,004,931.70	$14,887,200.57	$15,791,671.50	$16,268,639.64	$14,635,860.76
	9,474,537.51	9,645,769.48	9,502,728.96	9,747,246.38	9,923,000.21	10,076,314.93
Profit	$4,316,265.48	$7,359,162.22	$5,384,471.61	$6,044,425.12	$6,345,639.43	$4,559,545.83
Loss						

Surplus of 1898–99 was applied to Accident Fund.

October 13th, 1909.

E. and O. E.

Comptroller.

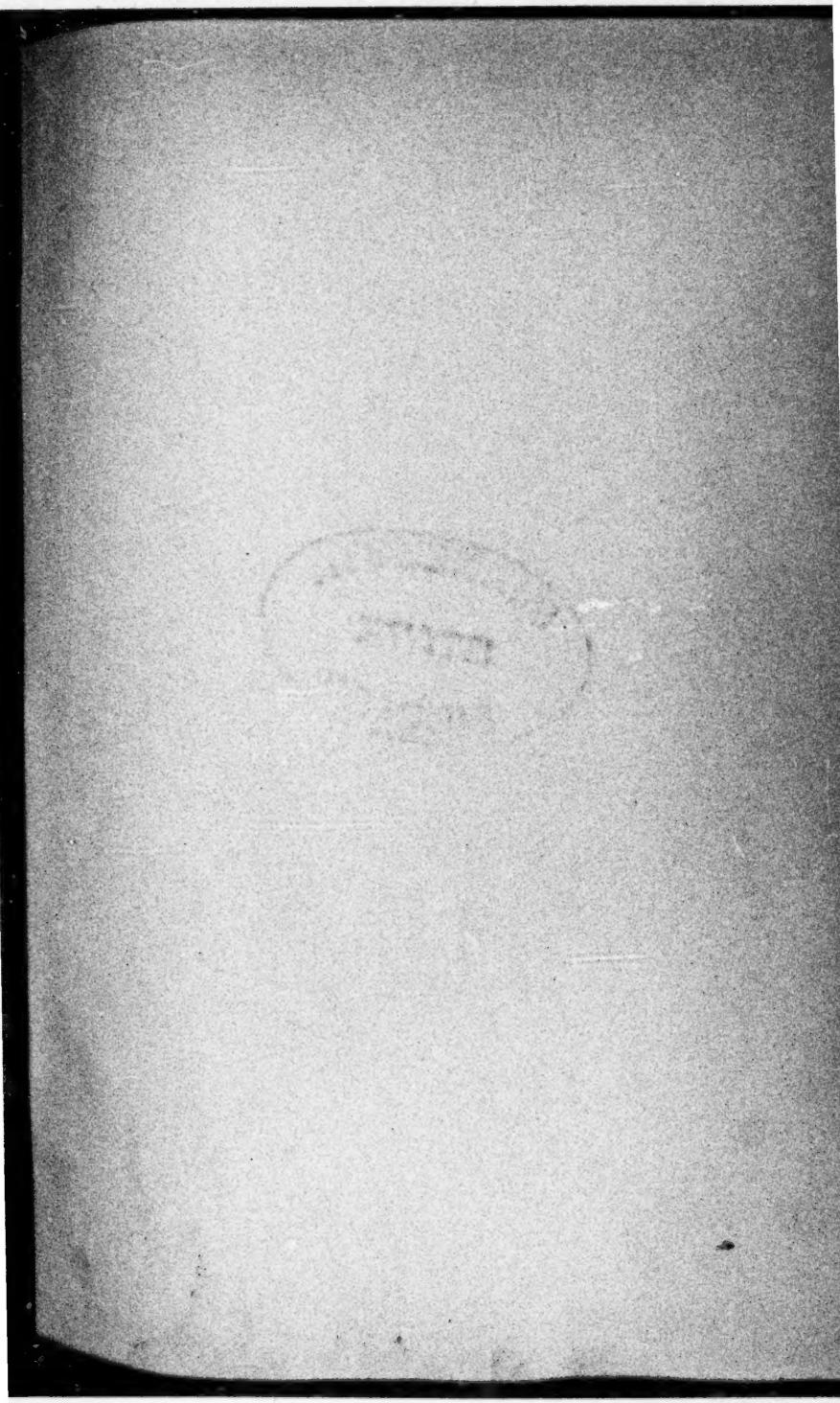
Counsel for the Erie Railroad Company read into the record the following tabulated statement extracted from the annual reports of the Erie Railroad Company:—

ERIE RAILROAD COMPANY (SYSTEM).

INCOME ACCOUNT.

Heavy Figures indicate deficit.

Years Ending	Gross Operating Revenue.	Operating Expenses and Taxes.	Operating Income.	Other Income.	Gross Corporate Income.	Deductions From Income.	Net Corporate Income.
Sept. 30, 1887	$26,567,858.74	$17,390,672.70	$9,177,186.04	$940,658.48	$10,117,844.52	$9,516,045.34	$601,799.18
" " 1888	27,217,989.75	18,003,469.47	9,214,520.28	937,840.63	10,152,360.91	9,413,518.39	738,842.52
" " 1889	27,004,406.01	17,854,424.95	9,149,981.06	1,076,504.64	10,226,485.70	9,451,709.25	774,776.45
" " 1890	29,068,935.02	19,505,950.81	9,562,984.21	1,090,016.24	10,653,000.45	9,792,746.41	860,254.04
" " 1891	30,090,699.51	20,243,935.60	9,846,763.91	1,040,032.62	10,886,796.53	9,881,418.73	1,005,377.80
" " 1892	31,261,784.17	21,466,783.48	9,795,000.69	1,035,843.81	10,830,844.50	10,097,584.62	733,259.88
" " 1893	29,993,160.00	20,147,777.93	9,845,382.07	1,043,908.68	10,889,290.75	9,971,852.55	917,438.20
" " 1894	25,204,428.62	17,921,308.76	7,283,119.86	1,063,758.01	8,346,877.87	9,514,284.92	**1,167,407.05**
" " 1895	17,017,376.59	12,877,423.87	4,139,952.72	55,546.26	4,195,498.98	4,043,789.55	151,709.43
June " 1896 (7 months)	31,497,030.92	23,332,242.58	8,164,788.34	313,513.30	8,478,301.64	8,126,282.77	352,018.87
" " 1897	33,740,860.16	25,438,037.95	8,302,822.21	413,367.59	8,716,189.80	8,082,273.04	633,916.76
" " 1898	33,752,703.92	25,169,926.28	8,582,777.64	557,576.06	9,140,353.70	8,486,555.44	653,798.26
" " 1899	38,293,031.87	28,448,605.14	9,844,426.73	420,107.79	10,264,534.52	8,601,104.18	1,663,430.34
" " 1900	39,102,302.42	28,406,974.27	10,695,328.15	1,496,077.53	12,191,405.68	9,368,249.34	2,823,156.34
" " 1901	40,894,433.89	28,176,600.19	12,717,833.70	1,945,207.89	14,663,041.59	10,278,364.58	4,384,677.01
" " 1902	45,830,413.32	29,925,758.45	15,904,654.87	1,430,230.20	17,334,885.07	8,901,618.46	8,433,266.61
" " 1903	45,201,163.28	32,581,838.04	12,619,325.24	789,312.33	13,408,637.57	8,856,584.61	4,552,052.96
" " 1904	45,724,737.62	33,142,208.08	12,582,529.54	1,048,689.00	13,631,218.54	9,224,622.83	4,406,595.71
" " 1905	50,002,634.36	35,872,837.06	14,129,797.30	537,301.21	14,667,098.51	9,650,454.80	5,016,643.71
" " 1906	53,914,827.35	38,167,039.09	15,747,788.26	2,202,625.14	17,950,413.40	12,046,754.92	5,903,658.48
" " 1907	50,007,602.90	41,089,032.22	8,918,570.68	2,750,467.46	11,669,038.14	13,292,460.70	**1,623,422.56**
" " 1908							

Compiled from published annual reports of Erie Railroad Company and its predecessors for the years indicated.

M. P. BLAUVELT, Comptroller.